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WINSLOW'S FORMS  
OF  
PLEADING AND PRACTICE  
UNDER THE CODE

To Which is Added a Collection of  
Approved Business Forms

FOR USE IN ALL CODE STATES, AND ESPECIALLY ADAPTED  
TO MEET THE REQUIREMENTS OF THE STATUTES OF  
WISCONSIN, MINNESOTA, IOWA, NORTH DAKOTA,  
SOUTH DAKOTA, NEBRASKA, KANSAS, MISSOURI,  
CALIFORNIA, IDAHO, UTAH, WYOMING,  
WASHINGTON, OREGON, MONTANA,  
COLORADO, ARKANSAS, OKLAHOMA,  
ARIZONA, AND TEXAS

With Notes and Citations of Statutes

By

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CHIEF JUSTICE SUPREME COURT OF WISCONSIN

with the assistance of  
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ASSISTANT REVISOR OF STATUTES

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SECOND EDITION

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IN THREE VOLUMES  
VOLUME I

CHICAGO  
T. H. FLOOD AND COMPANY  
1915

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1915

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## PREFACE TO THE SECOND EDITION

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The favor with which the first edition of this work was received has led the author to believe that an enlarged and revised edition, supplying some of the deficiencies noted in the first edition and covering a considerably larger number of states, would be generally acceptable to the profession. The present volumes are the result of this belief.

As said in the preface to the first edition the book is in no sense a textbook nor a treatise on pleading and practice but simply a collection of forms which will be useful to the lawyer practicing in a code state and especially in the states named on the title page. There have been added to the original work nearly one thousand forms including a chapter composed of carefully selected business forms which, it is believed, will prove useful to the practitioner.

Madison, Wisconsin, November, 1915.



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# PART I

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FORMS PRECEDING AND INITIATING  
ACTIONS OR ANCILLARY  
THERE TO



## CHAPTER I.

### CAPTIONS, ACKNOWLEDGMENTS AND JURATS.

1. Caption of preliminary petition, to a judge.
2. The same, to the court.
3. Caption of special proceeding.
4. Common caption of paper in an action, except an order or judgment.
5. The same; Minnesota and North Dakota.
6. The same; Iowa and Nebraska.
7. Caption and commencement of a petition (i. e. complaint) in an action; Texas.
8. Caption of order of court, or a judgment.
9. Formal parts of affidavit in an action.
10. The same, by two or more affiants.
11. Authentication of official character of officer taking affidavit without the state for use within the state.
12. Jurat taken before commissioner without the state.
13. Verification at foot of a petition, claim or statement.
14. Verification at foot of open account.
15. Acknowledgment, common form within state.
16. Acknowledgment by officers of a corporation.
17. Acknowledgment by corporation (short form.)
18. Acknowledgment by attorney in fact.
19. Acknowledgment of conveyance; Wisconsin form.
20. Acknowledgment taken out of the state to be used in Wisconsin.
21. Authentication of acknowledgment taken in another state for use in Wisconsin.
22. Acknowledgment, Arizona form.
23. Acknowledgment, Arkansas form.
24. Acknowledgment, California.
25. Acknowledgment by corporation; California.
26. Acknowledgment by attorney in fact; California.
27. Acknowledgment, Colorado form.
28. Acknowledgment, Colorado, by husband and wife on deeding homestead.
29. Acknowledgment of chattel mortgages; Colorado.
30. Acknowledgment, Idaho.
31. Acknowledgment by corporation; Idaho.
32. Acknowledgment by attorney in fact; Idaho.
33. Acknowledgment, Iowa form.
34. Acknowledgment by attorney in fact; Iowa form.
35. Acknowledgment by officer of a corporation; Iowa form.
36. Authentication of acknowledgment taken in another state for use in Iowa.

- |   |   |
|---|---|
| <p>37. Acknowledgment, Minnesota and Missouri form.</p> <p>38. Acknowledgment by attorney in fact; Minnesota and Missouri form.</p> <p>39. Acknowledgment by officer of a corporation or joint stock association; Minnesota and Missouri form.</p> <p>40. Authentication of acknowledgment taken in another state for use in Minnesota.</p> <p>41. Acknowledgment proved by subscribing witnesses; Missouri form.</p> <p>42. Acknowledgment, grantor not known, but identity proved by witnesses; Missouri form.</p> <p>43. Acknowledgment of conveyance by power of attorney; Missouri form.</p> <p>44. Acknowledgment, Montana.</p> <p>45. Acknowledgment by corporation; Montana.</p> <p>46. Acknowledgment by attorney in fact; Montana.</p> <p>47. Acknowledgment, North and South Dakota form.</p> <p>48. The same, by corporation.</p> <p>49. The same, by attorney in fact.</p> <p>50. Authentication when acknowledgment is taken before a</p> | <p>justice of the peace; North and South Dakota.</p> <p>51. Authentication of acknowledgment taken outside of state for use in Nebraska.</p> <p>52. Acknowledgment, Oklahoma form.</p> <p>53. Acknowledgment by corporation, Oklahoma form.</p> <p>54. Acknowledgment, Oregon form.</p> <p>55. Acknowledgment by corporation; Oregon form.</p> <p>56. Acknowledgment, Texas form.</p> <p>57. Proof of instrument by witness; Texas form.</p> <p>58. Acknowledgment, Utah form.</p> <p>59. Acknowledgment by corporation; Utah form.</p> <p>60. Acknowledgment where grantor unknown to officer; Utah form.</p> <p>61. Proof of instrument by subscribing witness; Utah form.</p> <p>62. Acknowledgment, Washington form.</p> <p>63. Acknowledgment by corporation; Washington form.</p> <p>64. Acknowledgment, Wyoming form.</p> <p>65. Admission of due service.</p> <p>66. Simple admission, not conceding it to be timely.</p> |
|---|---|

In this chapter will be found forms of captions and jurats in common use for ordinary legal papers. To these have been added forms of acknowledgments and the proper authentication thereof, for the reason that in many states all written instruments, excepting in some states wills and bills and notes, may be read in evidence when acknowledged in the manner provided by law for conveyances of real estate.

As a general rule acknowledgments are regulated by the statutes of the several states, and as an acknowledgment is purely a statutory matter, the greatest care should be taken to follow the particular statute. This is especially necessary in view of the fact that in order to entitle instruments to record, a certificate of acknowledgment in accordance with

law is generally absolutely necessary; and, of course, the same is true where the statutes provide that instruments which are acknowledged may be introduced in evidence.<sup>1</sup>

### 1. Caption of preliminary petition to a judge.

To the Honorable A. . . . B. . . . , Circuit Judge [or District Judge, or other official title of the judge addressed] of the . . . . Judicial Circuit [or District] of the state of . . . . . [or otherwise give full legal title of the court].

THE PETITION of L. . . . M. . . . , of the city of . . . . . , state of . . . . . , respectfully shows that [*proceed with statement of facts*].

### 2. The same, to the court.

To the Circuit Court [or District Court] of the . . . . Judicial Circuit [or District] of the state of . . . . . [or otherwise give full legal title of the court].

THE PETITION of L. . . . M. . . . , of the city of . . . . . , in said state, respectfully shows that [*proceed with statement of facts*].

<sup>1</sup>The various statutes which authorize the reception of private writings in evidence when properly acknowledged and authenticated are as follows: Wis. Stats. 1913 sec. 4185 (except bills and notes and wills); sec. 4156 (instruments affecting real property), Ariz. R. S. 1913 sec. 1746 (except bills and notes and wills); Ark. Dig. of Stats. 1904 sec. 756 (instruments affecting real estate); Cal. C. C. P. 1906 sec. 1948 (all except wills); Colo. Stats. Ann. 1911 sec. 695 (deeds and other instruments affecting real property); Idaho Rev. Codes 1908 sec. 5997 (except wills); sec. 5998 (deeds); Iowa Ann. Code 1897 sec. 4621 (except wills); Kans. Gen. Stats. 1909 sec. 1677 (instruments affecting real estate); Mont. Rev. Codes 1907 sec. 7954 (instruments affecting real property and those authorized to be filed or recorded); Minn. Gen. Stats. 1913

sec. 8425 (except bills and notes and wills); Mo. R. S. 1909 sec. 2818 (instruments affecting real property); Neb. R. S. 1913 sec. 7914 (except wills); sec. 10805 (deeds); N. Dak. Rev. Codes 1905 sec. 7297 (instruments affecting real property or those certified as provided in civil code); S. Dak. C. C. P. 1908 sec. 553 (only instruments acknowledged and duly recorded); Okla. Comp. Laws 1909 sec. 1209 (instruments affecting real property); Oregon Laws 1910 sec. 7125 (conveyances); Tex. Civ. Stats. Ann. 1913 art. 3700 (every instrument permitted or required to be recorded); Utah Comp. Laws 1907 sec. 3407 (except wills), Wash. Rem. and Bal. Code 1910 sec. 8796 (copies of recorded deeds when certified by county auditor); Wyo. Comp. Stats. 1910 sec. 3631 (instruments affecting real property).

3. Caption of special proceeding.

STATE OF .....

In Circuit Court for .....County [or otherwise give full legal title of court].

<p>In the matter of the application  of  A.... B...., an infant, for leave to  sell certain real estate [or other-  wise name the character of the pro-  ceeding].</p>
--

To the .....Court  
for ..... County.

THE PETITION of L.... M...., of the city of .....,  
state of ....., respectfully represents to the court [or other  
matter according to the nature of the paper].

4. Common caption of paper in an action, except an order  
or judgment.<sup>2</sup>

STATE OF .....

In Circuit Court for ..... County [or otherwise give full  
legal title of court].

<p>A.... B.... and C.... D....,  Plaintiffs,  vs.  E.... F.... and G.... H....,  Defendants.</p>
--

<sup>2</sup>A caption substantially in this form will be generally sufficient for papers in an action. There are some instances where the statutes make special requirements as to

the caption of particular papers, and these will be found noted later in this work in connection with the form given for that particular paper.

5. The same; Minnesota and North Dakota.

STATE OF ..... DISTRICT COURT  
County of ..... JUDICIAL DISTRICT.

A.... B....,  
vs.  
C.... D....,  
Plaintiff,  
Defendant.

6. The same; Iowa and Nebraska.

IN THE DISTRICT COURT FOR ..... COUNTY  
State of.....

A.... B....,  
vs.  
C.... D....,  
Plaintiff,  
Defendant.

7. Caption and commencement of a petition (i. e. complaint) in an action. Texas.

IN THE ..... COURT of the State of Texas for the  
County of.....

A.... B....,  
vs.  
C.... D....,  
Plaintiff,  
Defendant.

To the Honorable Judge of said Court:  
The petition of A.... B...., plaintiff, against C....  
D...., defendant, respectfully showeth:

8. Caption of order of court or a judgment.<sup>3</sup>

AT A GENERAL [or SPECIAL] TERM of the District  
[or Circuit] Court in and for ..... County, State of .....

<sup>3</sup>This is the old and somewhat ceremonious form used for the commencement of an order or judgment. It is scarcely necessary to say that this long preamble is by no means essential. An order or judgment may

begun and held at the Court House in the City of ....., in said County and on the .... day of ....., 19..

PRESENT, Hon. O.... P...., District [or Circuit] Judge, Presiding.

A.... B....,	} Plaintiff,
vs.	
C.... D....,	} Defendant.

9. Formal parts of affidavit in an action.\*

[Title of court and cause.]

State of ..... }  
County of ..... } ss.

A.... B...., being duly sworn, says he is the plaintiff [or defendant, or the attorney or agent of the plaintiff or defendant] in the above entitled action, and that [here state facts to be sworn to].

A.... B....

Subscribed and sworn to before me  
this .... day of ..... 19..

C.... D....  
Notary Public ..... County.

well commence with recitals of the previous proceedings in the action leading up to the order or judgment, as for instance, "The motion of the defendant herein for an order requiring the complaint to be made more definite and certain having come on to be heard before the court, E.... F.... appearing for the defendant and G.... H.... for the plaintiff," etc., or "This action having been brought to trial before the court and a jury, and the jury having returned a verdict," etc.  
\*An affidavit when made to be used in an action should always be properly entitled in the action. In

some states, however, the omission is not fatal if the affidavit intelligibly refers to the action. Wis. Stats. 1913 sec. 2836; Cal. C. C. P. 1906 sec. 1016; Colo. Stats. Ann. 1911 sec. 417; Idaho Rev. Codes 1908 sec. 4924; Mont. Rev. Codes 1907 sec. 7185; Minn. Gen. Stats. 1913 sec. 7746; N. Dak. Rev. Codes 1905 sec. 7344; S. Dak. C. C. P. 1908 sec. 566; Utah Comp. Laws 1907 sec. 3483; Wyo. Comp. Stats. 1910 sec. 4425. It should always contain the venue, be signed by the affiant, and the jurat should state the day on which it was taken and be subscribed by the officer with his official title.



10. The same, by two or more affiants.

[Title of court and cause.]

[Venue.]

A.... B.... and C.... D...., being severally duly sworn, each for himself says [here state facts to be sworn to].

A.... B....

[Jurat as in Form 9.]

C.... D....

11. Authentication of official character of officer taking affidavit without the state for use within the state.<sup>5</sup>

[Venue.]

I, A.... B...., who am a clerk [or prothonotary] of the ..... court of ..... county, in said state, do hereby certify that said court is a court of record having a seal, and that C.... D...., Esq., whose name is subscribed to the jurat of the foregoing affidavit was at the date of said jurat a notary public in and for said state [or other official, giving his proper title] duly appointed, qualified and acting, and was by the laws of said state duly authorized to take said affidavit and to administer oaths; that I am well acquainted with the handwriting of the said C.... D.... and verily believe his signature attached to said jurat to be genuine.

WITNESS my hand and the seal of said court, at the city of ..... in said county and state, this .... day of ....., 19..

A.... B....

[SEAL OF COURT] Clerk of the.....Court of.....  
County, State of.....

<sup>5</sup>The statutes of the various states differ considerably as to the necessity of authentication of the signature of an officer taking an affidavit in a foreign state. Generally, though not universally, the certificate of a notary public, under his official seal, requires no further authentication, but others must be authenticated. Wis. Stats. 1913 sec. 4203. In some states it is provided that affidavits may be taken without the state before any officer authorized to administer oaths and no requirements as to authentication appear to be made. Ariz. R. S. 1913 sec. 1765; Ark. Dig. of Stats.

1904 sec. 3153; Cal. C. C. P. 1906 sec. 2013; Iowa Ann. Code 1897 sec. 4674; Kans. Gen. Stats. 1909 sec. 5980; Mont. Rev. Codes 1907 sec. 7996; Nebr. R. S. 1913 sec. 7937; N. Dak. Rev. Codes 1905 sec. 7270; S. Dak. C. C. P. 1908 sec. 5083; Okla. Comp. Laws 1909 sec. 5865; Wash. Rem. & Bal. Code 1910 sec. 1264; Wyo. Comp. Stats. 1910 sec. 4561. Under Colorado laws such affidavits may be made by notary public or clerk of any court of record, such notary or clerk certifying the same under his notarial seal or seal of such court. Colo. Stats. Ann. 1911

**12. Jurat taken before commissioner without the state.**

The above affidavit was subscribed and sworn to before me the undersigned, a commissioner for the state of ..... residing at ..... in the state of ..... this .... day of ....., 19.

[*Signature and title of commissioner.*]

[OFFICIAL]

[ SEAL ]

[*Add authentication of secretary of state if required. It is not generally necessary.*]

sec. 4674; Tex. Civ. Stats. Ann. 1913 art. 13. The Idaho statute provides that the affidavit may be taken before a commissioner appointed for such purpose, before a notary public, or any judge or clerk of a court of record having a seal, the certificate of the clerk, under the seal of the court, to be attached when the affidavit is taken before a judge or court. Idaho Rev. Codes 1908 secs. 6056 and 6058; Mo. R. S. 1909 secs. 6326 and 6327; Oregon Laws 1910 sec. 830; Utah Comp. Laws 1907 sec. 3446. Under the Minnesota statute the jurat of a notary or commissioner requires no authentication, but the jurats of other officers must be authenticated. Minn. Gen. Stats. 1913 sec. 8399.

Depositions do not require authentication if the officer before whom they are taken has an official seal. Wis. Stats. 1913 sec. 4110; Ariz. R. S. 1913 sec. 1696; Idaho Rev. Codes 1908 secs. 6059 and 6068a (mayor or recorder of a city may take); Minn. Gen. Stats. 1913 sec. 8381; Mo. R. S. 1909 sec. 6387; Nebr. R. S. 1913 sec. 7911 (officer must not be relative or attorney of either party, sec. 7912); N. Dak. Rev. Codes 1905 sec. 7274; S. Dak. C. C. P. 1908 sec. 512; Okla. Comp. Laws 1909 sec. 5868; Utah Comp. Laws 1907 sec. 3454x3; Wash. Rem. & Bal. Code 1910 sec. 1239. The Arkansas statute requires that a deposition taken outside of the state by a judge, justice of the peace, or

other judicial officer shall be authenticated by the certificate and seal of the clerk of any court of record where such judicial officer resides. Ark. Dig. of Stats. 1904 sec. 3164; Oregon Laws 1910 sec. 830. The California laws provide that a deposition may be taken by a commissioner appointed for the purpose by a judge or by a person agreed upon by the parties, or, if they do not agree, by any judge or justice of the peace or commissioner selected by court issuing commission. Cal. C. C. P. 1906 sec. 2024; Colo. Stats. Ann. 1911 sec. 382; Mont. Rev. Codes 1907 sec. 8002. The Iowa code provides that if the deposition be taken before an officer not having a seal, there must be authentication by certificate of the clerk of a court of record under its seal, or that of the officer having in charge the seal of the state. Iowa Ann. Code 1897 sec. 4703; Kans. Gen. Stats. 1909 sec. 5951; Wyo. Comp. Stats. 1910 sec. 4567 (if officer has no seal, certificate of county clerk is required). The Texas statute provides that if the witness reside or be out of the state and within the United States the commission to take the deposition shall be addressed to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of Texas, within some other state or territory. Tex. Civ. Stats. Ann. 1913 art. 3657.

**13. Verification at foot of a petition, claim or statement.**

[Venue.]

A.... B...., being duly sworn, says that he is the petitioner above named [or the claimant above named, or the person who makes the foregoing statement], and that he has read and knows the contents of said petition [claim or statement] and that the same is true of his own knowledge [or if there be statements made upon belief only that the statements therein contained are true of his own knowledge, except as to those statements made upon information and belief, and as to those statements he believes it to be true].

A.... B....

Subscribed and sworn to before me,  
this .... day of ....., 19..

C.... D....

[Official Title]

**14. Verification at foot of open account.**

[Venue.]

A.... B...., being duly sworn, says that the above and foregoing account is just and true, that there are no offsets thereto, nor have any payments been made thereon [except those named in said account], and that there is now justly due and owing thereon to this affiant from the said C.... D.... the sum of ..... Dollars [with interest from .....].

A.... B....

[Jurat as in last preceding form.]

**15. Acknowledgment, common form within state.<sup>6</sup>**

[Venue.]

On this .... day of ....., 19.., before me, E.... F...., a notary public for said County [or otherwise state the name and title of the officer as the fact is] personally appeared A.... B.... [and C.... D....] known to me to be the person [or the persons, or on of the persons] named in and who executed the within [or foregoing] instrument, and duly acknowledged [or severally duly acknowledged] that he [or

<sup>6</sup>This form and Forms 16 and 18 will generally be found sufficient for use in the code states although certain

statutory forms and forms drawn to meet the special requirements of the statutes of various states follow

they] executed the same as his [or their] free and voluntary act and deed, for the uses and purposes therein set forth.

E.... F....

[OFFICIAL SEAL]

[Official title.]

## 16. Acknowledgment by officers of a corporation.

[Venue.]

On this .... day of ....., 19.., before me personally appeared A.... B.... and C.... D.... to me personally known to be the persons who signed the foregoing instrument, who being by me each duly sworn [or affirmed] did say that he, the said A.... B.... is president [or other officer or agent] and that he, the said C.... D.... is the secretary [or clerk] of the ..... Company, a corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that he, the said A.... B.... signed and executed the said instrument as president [or other officer or agent] of said corporation and he, the said C.... D.... countersigned the same as secretary [or clerk] thereof, and that they caused the corporate seal of said corporation to be affixed thereto on behalf of said corporation by authority of its board of directors [or trustees], and the said A.... B.... and C.... D.... severally acknowledged that they executed said instrument by and on behalf of said corporation as its free and voluntary act and deed.

E.... F....

[OFFICIAL SEAL]

[Official title.]

## 17. Acknowledgment by corporations (short form).

[Venue.]

On this .... day of ....., 19.., before me personally appeared C.... D...., and E.... F.... and to me personally known, who being by me duly sworn did say, that they were respectively the president and secretary [or other officials giving correct official titles] of the ..... company a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, [or that said corporation has no corporate seal], and that said instrument was signed and sealed in behalf of said corporation, by authority

of its Board of Directors and said C.... D...., and E.... F.... acknowledged the said instrument to be the voluntary act and deed of said corporation.

[OFFICIAL SEAL]

A.... B....  
[Official title.]

### 18. Acknowledgment by attorney in fact.

[Venue.]

On this .... day of ....., 19.., before me personally appeared A.... B...., to me personally known, and acknowledged that he executed the foregoing instrument as the voluntary act and deed of C.... D...., the grantor therein described, by virtue of a power of attorney duly executed by the said C.... D...., to said A.... B...., dated ....., 19.., and recorded in the office of the register of deeds [or other proper officer] of the county of ..... on the .... day of ....., 19.., in volume .... on page .... [or if the power of attorney be not recorded, which power of attorney was exhibited to me for my inspection at the time of this acknowledgment and appeared to me to have been duly executed by the said C.... D.... and to contain due authority to the said A.... B.... authorizing him to execute and acknowledge the foregoing instrument].

[OFFICIAL SEAL]

E.... F....  
[Official title.]

### 19. Acknowledgment of conveyance; Wisconsin form.<sup>7</sup>

[Venue.]

Personally came before me this .... day of ....., 19.., the above [or within] named A.... B...., and C.... D...., his wife<sup>8</sup> [or if an officer, adding the name of his office], to me known to be the person who executed the foregoing [or within] instrument, and acknowledged the same.

[OFFICIAL SEAL]

E.... F....  
[Official title.]

<sup>7</sup>Wis. Stats. 1913 sec. 2217. If the acknowledgment is taken by a notary public it must be attested by a clear impression of his seal, and in addition thereto must be written or stamped the day, month and year

when his commission will expire. Wis. Stats. 1913 sec. 176a.

<sup>8</sup>The acknowledgment of a married woman in Wisconsin may be taken and certified as if she were sole. Wis. Stats. 1913 sec. 2221.



**20. Acknowledgment taken out of the state to be used in Wisconsin.**

[Under Wis. Stats. 1913 secs. 2218 and 2219 a conveyance executed in any other state may be acknowledged and certified as prescribed by the laws of Wisconsin, in which case Form 15 should be used, or it may be executed and acknowledged according to the laws of the state, territory or district in which it is executed, in which latter case the certificate of acknowledgment proper in such other state or territory should be used, adding thereto the following clause]:

And I certify that the said deed [or instrument] is executed and acknowledged according to the laws of the state of.....

E.... F....

[OFFICIAL SEAL]

[Official title.]

**21. Authentication of acknowledgment taken in another state for use in Wisconsin.<sup>9</sup>**

[Venue.]

I, A.... B...., who am clerk [or prothonotary] of the .... court of ..... county, in said state, do hereby certify that said court is a court of record having a seal, and that E.... F...., Esq., whose name is subscribed to the foregoing certificate of acknowledgment was at the date thereof a justice of the peace in and for said county [or other official, giving his proper title] duly qualified and acting and duly authorized to take such acknowledgment, and that I believe the signature of said E.... F.... to said certificate to be genuine, and [if the conveyance be executed and acknowledged according to the laws of such foreign state] that said deed [or instrument] is executed and acknowledged according to the laws of said state of .....

WITNESS my hand and official seal this .... day of ....., 19..

[SEAL OF COURT]

A....B....

Clerk of the .....Court  
for the county of .....  
State of .....

<sup>9</sup>This authentication is unnecessary if the acknowledgment be taken before a commissioner of deeds for Wisconsin, a clerk of a court of record, or a notary public with seal

attached, or the commanding officer of a military post of the United States, within his jurisdiction; but if taken before any other officer it is essential. Wis. Stats. 1913 sec. 2219.

**22. Acknowledgment, Arizona form.<sup>10</sup>**

[Venue.]

This instrument was acknowledged before me this .... day of ....., 19.., by *[if a natural person or persons here insert name or names; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney in fact, or other capacity; if by an officer or officers of a corporation, then insert name or names of such officer or officers, as the president or other officer of such corporation, naming it].*

A.... B....

[OFFICIAL SEAL] Notary Public *[or other officer.]***23. Acknowledgment, Arkansas form.<sup>11</sup>**

[Venue].

On this .... day of ....., 19.., before me personally appeared A.... B.... [and C.... D....], known to me to be the person *[or the persons]* named in and who executed the within *[or foregoing]* instrument and acknowledged *[or severally acknowledged]* that he *[or they]* executed the same as his *[or their]* free and voluntary act and deed for the consideration and purposes therein mentioned and set forth.

Witness my hand and official seal.

E.... F....

[OFFICIAL SEAL.] *[Official title.]*

*[In case the grantor is not personally known to the officer insert in place of the words "known to me to be the person", etc. the words "proved to me on the oath of ....., to be the person," etc.]*

<sup>10</sup> Ariz. R. S. 1913 sec. 2076. An acknowledgment made without the state, acknowledged and verified in accordance with the laws of the state or territory where made is valid in Arizona. Ariz. R. S. 1913 sec. 2077.

<sup>11</sup> Ark. Dig. of Stats. 1904 secs. 748 and 749. If the identity of the person executing the instrument is proven to the officer by affidavit, the affidavit must be endorsed upon the

deed or instrument. Acknowledgments without the state unless taken before a commissioner appointed by the governor of Arkansas must be taken before a court having a seal, or the clerk thereof, or before a notary public, or before the mayor or chief officer of a city or town having a seal, (Ark. Dig. of Stats. 1904 sec. 743), and must be authenticated by the seal of the officer taking it, (Ark. Dig. of Stats. 1904 sec. 744).

**24. Acknowledgment, California form.<sup>12</sup>**

[Venue.]

On this .... day of ....., in the year 19..., before me [here insert name and quality of the officer], personally appeared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the person whose name is subscribed to the within instrument, and acknowledged that he [she or they] executed the same.

E.... F....

[OFFICIAL SEAL]

[Official title.]

**25. Acknowledgment by corporation, California (Cal. C. C. 1906 sec. 1190).**

[Venue.]

On this .... day of ....., in the year ....., before me [here insert name and quality of the officer], personally appeared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the president [or the secretary] of the corporation that executed the within instrument [where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary insert: known to me, (or proved to me on the oath of C.... D....) to be the person who executed the within instrument on behalf of the corporation therein named] and acknowledged to me that such corporation executed the same.

E.... F....

[OFFICIAL SEAL]

[Official title.]

**26. Acknowledgment by attorney in fact, California (Cal. C. C. 1906 sec. 1192).**

[Venue.]

On this .... day of ....., in the year ....., before me [here insert the name and quality of the officer], personally ap-

<sup>12</sup> Cal. C. C. 1906 sec. 1189. Without the state the acknowledgment may be taken before a judge or clerk of any court of record, a commissioner appointed by the governor of California, a notary public, or any other officer of the state where made, authorized by its laws to take acknowledgments. Cal. C. C. 1906 sec. 1182. An acknowledgment taken in accordance with the laws of the

state where made is valid in California. Cal. C. C. 1906 sec. 1189. But, in either case the acknowledgment must be authenticated by the certificate of the clerk of a court of record. Cal. C. C. 1906 sec. 1189. It may also be taken before the deputy, if any, of any officer authorized to take the same, in the name of such officer. Cal. C. C. 1906 sec. 1184.



peared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the person whose name is subscribed to the within instrument as the attorney in fact of E.... F...., and acknowledged to me that he subscribed the name of E.... F.... thereto as principal, and his own name as attorney in fact.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

### 27. Acknowledgment, Colorado form.<sup>13</sup>

[Venue.]

A.... B.... appeared before me this .... day of ....., 19.., in person, and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal.

[OFFICIAL SEAL]

C.... D....  
[Title of Officer.]

My commission expires ..... 19..

### 28. Acknowledgment by husband and wife on deeding homestead (Colo. Stats. Ann. 1911 sec. 2955).

[Venue.]

C.... D.... appeared before me this .... day of ....., 19.., in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein. Also on the same day appeared before me E.... F.... in person, known to me to be the wife of the said C.... D...., who was by me examined separate and apart from her husband and fully appraised of her rights and the effect of signing said deed [mortgage, or other conveyance], and then acknowledged that she freely and voluntarily signed and executed the said

<sup>13</sup> Colo. Stats. Ann. 1911 sec. 691. If taken without the state, it is sufficient if the acknowledgment be taken before the secretary of state, the clerk of a court of record having a seal, a notary public, or a commissioner appointed under the laws of Colorado; in such cases, however, it must be certified by the seal of the

officer taking it. Acknowledgments without the state may also be taken before any other officer authorized by the laws of his state to take acknowledgments, but must then be authenticated by the certificate of the clerk and the seal of a court of record. Colo. Stats. Ann. 1911 sec. 684.

instrument and that the same was her act and deed for the uses specified therein.

Witness my hand and official seal.

[OFFICIAL SEAL]

My commission expires . . . . . 19..

A . . . . B . . . .

[*Title of Officer.*]

## 29. Acknowledgment of chattel mortgage (Colo. Stats. Ann. 1911 sec. 513).

[*Venue.*]

This mortgage was acknowledged before me by A . . . . B . . . . [*here insert the name of the mortgagor*] this . . . . day of . . . . ., A. D. 19..

Witness my hand and official seal.

[OFFICIAL SEAL]

My commission expires . . . . . 19..

C . . . . D . . . .

[*Title of Officer.*]

## 30. Acknowledgment. Idaho.<sup>14</sup>

[*Venue.*]

On this . . . . day of . . . . ., in the year of . . . ., before me [*here insert the name and quality of the officer*], personally appeared A . . . . B . . . ., known to me [*or proved to me on the oath of C . . . . D . . . .*], to be the person whose name is subscribed to the within instrument and acknowledged to me that he [*or they*] executed the same.

[OFFICIAL SEAL]

O . . . . P . . . .

[*Official title.*]

<sup>14</sup>Idaho Rev. Codes, 1908 sec. 3131. By sec. 3129 *id.* the acknowledgment of a married woman is to be taken and certified in the same manner as if she were single. Acknowledgments without the state may be taken before the judge or clerk of any court of record, a commissioner appointed by the governor of Idaho, a notary public, or any other officer of the state where taken authorized by its laws to take acknowledgments. Idaho Rev. Codes

1908 sec. 3125. Or by his deputy, if any, in the name of such officer. Idaho Rev. Codes 1908 sec. 3127. The officer taking the acknowledgment must affix his seal. Idaho Rev. Codes 1908 sec. 3134. An acknowledgment taken by a justice of the peace within the state for use without the county of his residence must be authenticated by the certificate and seal of the recorder of his county. Idaho Rev. Codes 1908 sec. 3135.

**31. Acknowledgment by corporation (Idaho Rev. Codes 1908 sec. 3132).**

[*Venue.*]

On this .... day of ....., in the year ....., before me [*here insert the name and quality of the officer*], personally appeared A.... B...., known to me [*or proved to me on the oath of C.... D....*] to be the president [*or the secretary*] of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

O.... P....

[OFFICIAL SEAL]

[*Official title.*]

**32. Acknowledgment by attorney in fact (Idaho Rev. Codes 1908 sec. 3133).**

[*Venue.*]

On this .... day of ....., in the year ....., before me [*here insert the name and quality of the officer*] personally appeared A.... B...., known to me [*or proved to me on the oath of C.... D....*] to be the person whose name is subscribed to the within instrument as the attorney in fact of E.... F...., and acknowledged to me that he subscribed the name of E.... F.... thereto as principal, and his own name as attorney in fact.

O.... P....

[OFFICIAL SEAL]

[*Official title.*]

**33. Acknowledgment, Iowa form.<sup>15</sup>**

[*Venue.*]

On this .... day of ....., 19... before me personally appeared A.... B.... [*or A.... B.... and C.... D....*] to me known to be the person [*or persons*] named in and who executed the foregoing instrument, and acknowledged that he [*or they*] executed the same as his [*or their*] voluntary act and deed.

L.... M....

[OFFICIAL SEAL]

Notary Public in and  
for said County

<sup>15</sup>This and the two following forms are prescribed by Iowa Ann. Code, 1897 sec. 2959. A married

woman's acknowledgment may be taken in the same form as if she were sole. *Id.* sec. 2960.

**34. Acknowledgment by attorney in fact, Iowa form.**

[Venue.]

On this .... day of ....., 19.., before me personally appeared A.... B.... to me known to be the person who executed the foregoing instrument in behalf of C.... D.... and acknowledged that he executed the same as the voluntary act and deed of the said C.... D....

L.... M....

[OFFICIAL SEAL]

[Official title.]

**35. Acknowledgment by officer of a corporation; Iowa form.**

[Venue.]

On this .... day of ....., 19.., before me appeared A.... B.... to me personally known, being by me duly sworn [or affirmed] did say that he is the president [or other officer or agent of the corporation or association] of [describing the corporation or association] and that the seal affixed to said instrument is the corporate seal of said corporation [or association] and that said instrument was signed and sealed in behalf of said corporation [or association] by authority of its board of directors [or trustees] and said A.... B.... acknowledged said instrument to be the voluntary act and deed of said corporation [or association]. [In case of no corporate seal, omit the words, "the seal affixed, &c" and add at the end of the affidavit clause the words "and that said corporation,—or association—has no corporate seal"].

C.... D....

[OFFICIAL SEAL]

[Official title.]

**36. Authentication of acknowledgment taken in another state for use in Iowa.<sup>16</sup>**

[Venue.]

I, E.... F...., clerk of the .... court in and for said county, which court is a court of record having a seal [or

<sup>16</sup> Iowa Ann. Code, 1897 secs. 2942, 2944, 2945 and 2946. Acknowledgments in another state for use in Iowa may be taken before a judge of a court of record or officer holding the seal thereof, a commissioner appointed by the governor of Iowa, a notary public, a justice of the peace,

or any other officer authorized to take acknowledgments; but in all cases there must be attached an authentication by the secretary of state or clerk of a court of record with a seal, substantially in compliance with this form.

I, E.... F...., Secretary of State of such state or territory] do hereby certify that C.... D.... by and before whom the foregoing acknowledgment [or proof] was taken, was at the time of taking the same a notary public [or other officer] residing [or authorized to act] in said county, and was duly authorized by the laws of said state [territory or district] to take and certify acknowledgments or proofs of deeds of lands in said state [territory or district] and that said conveyance and acknowledgment thereof are in due form of law; and further, that I am well acquainted with the handwriting of said C.... D...., and that I verily believe that the signature to said certificate of acknowledgment [or proof] is genuine.

IN TESTIMONY whereof, I have hereunto set my hand and affixed the seal of the said court [or state] this ..... day of ....., 19...

[OFFICIAL SEAL]

E.... F....  
[Official title.]

### 37. Acknowledgment; Minnesota and Missouri form.<sup>17</sup>

[Venue.]

On this .... day of ....., 19.., before me personally appeared A.... B.... [or A.... B.... and C.... D....] to me known to be the person [or persons] described in and who executed the foregoing instrument, and acknowledged that he [or they] executed the same as his [or their] free act and deed.

[OFFICIAL SEAL]<sup>18</sup>

E.... F....  
[Official title.]

### 38. Acknowledgment by attorney in fact; Minnesota and Missouri form.

[Venue.]

On this .... day of ....., 19.., before me personally appeared A.... B.... to me known to be the person who

<sup>17</sup> This form and the two immediately following are prescribed by Minn. Gen. Stats. 1913 sec. 5740, and Mo. R. S. 1909 sec. 2799. When a married woman united with her husband the acknowledgment is in the same form, she being described as his wife; no separate examination

is required in either Minnesota or Missouri.

<sup>18</sup> Notaries public having an official seal are required to affix it to the acknowledgment. Minn. Gen. Stats. 1913 sec. 5710. Mo. R. S. 1909 sec. 10180.



executed the foregoing instrument in behalf of C.... D.... and acknowledged that he executed the same as the free act and deed of the said C.... D....

E.... D....

[OFFICIAL SEAL]

[Official title.]

**39. Acknowledgment by officer of a corporation or joint stock association; Minnesota and Missouri form.**

[Venue.]

On this .... day of ....., 19.., before me appeared A.... B.... to me personally known, who being by me duly sworn [or affirmed] did say that he is the president [or other officer or agent of the corporation or association] of [describing the corporation or association] and that the seal affixed to said instrument is the corporate seal of said corporation [or association] and that said instrument was signed and sealed in behalf of said corporation [or association] by authority of its board of directors [or trustees] and said A.... B.... acknowledged said instrument to be the free act and deed of said corporation [or association]. [In case the corporation or association has no seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation—or association—and that," and add at the end of the affidavit clause the words "and that said corporation—or association—has no corporate seal"].

E.... F....

[OFFICIAL SEAL]

[Official title.]

**40. Authentication of acknowledgment taken in another state for use in Minnesota.<sup>19</sup>**

[Venue.]

I, A.... B...., who am clerk [or other proper certifying officer] of the .... court of ..... county, in said state, do hereby certify that said court is a court of record having a seal, and that C.... D.... Esq., whose name is subscribed to the foregoing certificate of acknowledgment, was at the date thereof a justice of the peace in and for said county

<sup>19</sup> Acknowledgments of deeds for use in Minnesota may be taken in any other part of the United States before any of the justices of the supreme court of the United States.

or any of the district judges of the United States, or any judge of any supreme, superior, circuit or any other court of record of any state, territory, or district, acting within

[or other official, giving his proper title] duly qualified and acting and duly authorized to take such acknowledgment, and that I verily believe the signature of said C.... D.... subscribed to said certificate of acknowledgment to be genuine.

WITNESS my hand and official seal this .... day of ....., 19..

[SEAL OF COURT]

A.... B....  
[Official title.]

**41. Acknowledgment proved by subscribing witness  
(form No. 184, Mo. R. S. 1909 p. 3777).**

[Venue.]

Be it remembered, that C.... D...., who is personally known to the undersigned, a justice of the peace within and for said county, to be the same person whose name is subscribed to the within and foregoing deed as a witness thereto, this day appeared before me; and the said C.... D...., having been by me duly sworn, deposes and says that A.... B...., whose name is subscribed to said deed as a party thereto, is the person who executed the said deed, and that said C.... D.... subscribed his name to said deed as a witness thereof.

In witness whereof, etc.

[OFFICIAL SEAL]

E.... F....  
Justice of the Peace.

his jurisdiction, or before the clerks of any of such courts, or before a notary public, justice of the peace, or a commissioner of deeds for Minnesota within the territory for which he is appointed; but if taken before any officer not having an official seal affixed to the certificate there must be an authentication of his official character attached in substantially this form. Minn. Gen. Stats. 1913 secs. 5744, 5745, 8399. Acknowledgments for use in Missouri may be taken within the state by the judge, justice or clerk of a court having a seal, a notary public or

justice of the peace of the county in which the land conveyed is situated; without the state and within the United States, by any notary public, or by any United States or state court having a seal, or by the clerk thereof, or by any commissioner of deeds for Missouri; without the United States by any court having a seal, the mayor, chief officer of any city or town having a seal, or notary public having a seal, or by any minister or consular officer of the United States. Mo. R. S. 1909 sec. 2794.

**42. Acknowledgment, grantor not known, but identity proved by witnesses (form No. 185, Mo. R. S. 1909 p. 3777).**

[*Venue.*]

Be it remembered, that A.... B.... this day appeared before the undersigned, justice of the peace within and for said county, and C.... D.... and E.... F...., both of the county of ....., state of Missouri, two witnesses, having been by me first duly sworn, depose and say that the said A.... B.... is the person whose name is subscribed to the within and foregoing deed as a party thereto, and that said witnesses subscribed their names to such instrument as witnesses thereof, and the said A.... B.... then and there acknowledged that he executed and delivered the same as his free act and deed for the uses and purpose therein contained.

In witness whereof, etc.

[OFFICIAL SEAL]

E.... F....  
Justice of the Peace.

**43. Acknowledgment of conveyance by power of attorney (form No. 186, Mo. R. S. 1909 p. 3778).**

[*Venue.*]

Be it remembered that A.... B...., who is personally known to the undersigned, E.... F...., justice of the peace within and for the county of ....., aforesaid, to be the person who subscribed the name of C.... D.... to the above and foregoing deed or instrument of writing, as a party thereto, as attorney in fact of the said C.... D...., personally appeared before me, on the .... day of ..... 19.., and acknowledged that he executed the said deed or instrument of writing as the free act and deed of the said C.... D...., for the purpose therein mentioned.

In witness whereof, etc.

[OFFICIAL SEAL]

E.... F....  
Justice of the Peace.

**44. Acknowledgment. Montana.<sup>20</sup>**

[*Venue.*]

On this .... day of ....., in the year ....., before me [*here insert the name and quality of the officer*], personally



appeared A.... B...., known to me [proved to me on oath of C.... D....], to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [or they] executed the same.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

**45. Acknowledgment by corporation (Mont. Rev. Codes 1907 sec. 4664).**

[Venue.]

On this .... day of ....., in the year ....., before me [here insert the name and quality of the officer], personally appeared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the president [or secretary] of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

**46. Acknowledgment by attorney in fact (Mont. Rev. Codes 1907 sec. 4666).**

[Venue.]

On this .... day of ....., in the year ....., before me [here insert name and quality of the officer], personally appeared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the person whose name is subscribed to the within instrument as the attorney in fact of .....,; and acknowledged to me that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

<sup>20</sup> Mont. Rev. Codes, 1907 sec. 4663. By sec. 4665 *id.* the certificate of acknowledgment by a married woman must be substantially in the same form. Acknowledgments without the state may be taken before a judge or clerk of a court of record, a commissioner appointed by the governor of Montana, a notary

public, or any other officer authorized to take acknowledgments. Mont. Rev. Codes 1907 sec. 4656. They may be taken by the official deputy of such officer, in the name of his principal. *Id.* sec. 4658. When taken by a justice of the peace, for use without his county, authentication is required. *Id.* sec. 4668.

**47. Acknowledgment; North and South Dakota form.<sup>21</sup>**

[Venue.]

On this .... day of ....., in the year 19.., before me personally appeared A.... B.... known to me [or proved to me on the oath of C.... D....] to be the person who is described in and who executed the within instrument, and acknowledged to me that he [or they] executed the same.

E.... F....

[OFFICIAL SEAL]

[Official title.]

**48. The same, by corporation.**

[Venue.]

On this .... day of ..... in the year 19.., before me [here insert the name and quality of the officer] personally appeared A.... B.... known to me [or proved to me on the oath of C.... D....] to be the president [or the secretary] of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

E.... F....

[OFFICIAL SEAL]

[Official title.]

**49. The same, by attorney in fact.**

[Venue.]

On this .... day of ....., in the year 19.., before me [here insert the name and quality of the officer] personally appeared A.... B.... known to me [or proved to me on the oath of C.... D....] to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of I.... K...., and acknowledged to me that he subscribed the name of I.... K.... thereto as principal and his own name as attorney in fact.

E.... F....

[OFFICIAL SEAL]

[Official title.]

<sup>21</sup> N. Dak. Rev. Codes 1905 sec. 5022; S. Dak. Civ. Code 1908 sec. 981. This form and the two im-

mediately following are prescribed by the statutes of both North and South Dakota, and are identical.

**50. Authentication when acknowledgment is taken before a justice of the peace; North and South Dakota.<sup>22</sup>**

[*Venue.*]

I, A.... B...., who am clerk of the ..... court in and for ..... county in said state, which is a court of record having a seal, do hereby certify that C.... D...., whose name is subscribed to the foregoing certificate of acknowledgment was at the time of the taking of such acknowledgment a justice of the peace residing in said county and was at said time duly authorized to take such acknowledgment, and further that I am acquainted with his handwriting and believe that the signature attached to said original certificate is genuine.

WITNESS my hand and the seal of said court this .... day of ....., 19..

[SEAL OF COURT]

A.... B....  
[*Official title.*]

**51. Authentication of acknowledgment taken outside of state for use in Nebraska.<sup>23</sup>**

[*Venue.*]

I, A.... B...., who am clerk of the ..... court of ..... county in said state do hereby certify that said court is a

<sup>22</sup>By the laws of both North and South Dakota an acknowledgment within the state may be taken before a notary public, justice or clerk of the supreme court, the judge or clerk of a court of record, the mayor of a city, a register of deeds, justice of the peace, a United States circuit or district court commissioner, a county clerk, or a county auditor; when taken without the state and within the United States, it may be taken before the following officers within their respective jurisdictions: viz, a justice, judge, or clerk of any United States or state court of record, a notary public, any officer authorized by the laws of such state to take acknowledgments, or a commissioner of deeds appointed

for the purpose by the governor of the home state. N. Dak. Rev. Codes 1905 secs. 5011, 5012, 5013; S. Dak. Civ. Code 1908 secs. 970, 971, 972. If made before a justice of the peace for use in another county it must have attached a certificate substantially in this form; but other officers are simply required to affix their signatures with their official titles and seals, the mayors of cities affixing the seal of the city. N. Dak. Rev. Codes 1905 sec. 5028; S. Dak. Rev. Civ. Code 1908 sec. 981, subd. 5. The acknowledgment of a married woman is taken and certified in the same manner as if she were sole. N. Dak. Rev. Code 1905 sec. 5016; S. Dak. Civ. Code 1908 sec. 975.

<sup>23</sup>In Nebraska the grantor must

court of record having a seal, and that E.... F...., Esq., whose name is subscribed to the foregoing certificate of acknowledgment was at the date thereof a justice of the peace in and for said county [*or other officer, giving his official title*] duly qualified and acting and duly qualified to take such acknowledgment; and that I am well acquainted with the handwriting of such officer and believe the said signature of said E.... F...., which is attached to said certificate, to be genuine; and I further certify that said deed [*or other instrument*] is executed or acknowledged according to the laws of ..... [*name the state or territory in which the acknowledgment is taken*].

WITNESS my hand and official seal this .... day of ....., 19..

[SEAL OF COURT]

A.... B....  
[*Official title.*]

## 52. Acknowledgment, Oklahoma form.<sup>24</sup>

[*Venue.*]

Before me, ....., in and for said county and State, on this .... day of ..... 19.., personally appeared ..... and ..... to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that ..... executed the same as ..... free and voluntary act and deed for the uses and purposes therein set forth.

[OFFICIAL SEAL]

O.... P....  
[*Official title.*]

## 53. Acknowledgment by corporation (Okla. Comp. Laws 1909 sec. 1230).

[*Venue.*]

Before me, a ..... in and for said county and state, on this .... day of ....., 19.., personally appeared ....., to me known to be the identical person who subscribed the

"acknowledge the instrument to be his voluntary act and deed". Neb. R. S. 1913 sec. 6197. If taken outside of the state before a commissioner of deeds for Nebraska, a notary public or other officer using

an official seal, no authentication is necessary, but if taken before a justice of the peace an authentication substantially in this form is necessary.

<sup>24</sup> Okla. Comp. Laws 1909 sec.

name of the maker thereof to the foregoing instrument as its [attorney in fact, president, vice-president, or mayor, as the case may be] and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

#### 54. Acknowledgment, Oregon form.<sup>25</sup>

[Venue.]

Before the undersigned, a justice of the peace for the precinct of . . . . ., in the county and state aforesaid, personally appeared the within [or above] named A.... B.... and C.... D.... his wife, to me known to be the individuals described in, and who executed the within [or above] conveyance [or power of attorney, as the case may be], and the said A.... B.... acknowledged that he executed the same, and the said C.... D.... being by me examined separate and apart from her said husband, then and there acknowledged that she executed such conveyance freely, and without fear or compulsion from any one; this .... day of . . . . ., 19..

[OFFICIAL SEAL]

E.... F....  
Justice of the Peace.

#### 55. Acknowledgment by corporation, Oregon form (Oregon Laws 1910 sec. 7116).

[Venue.]

On this .... day of . . . . ., 19.., before me appeared A.... B...., to me personally known, who, being duly

1221. Acknowledgments without the state may be taken before any notary public, clerk of a court of record, or commissioner appointed by the governor of Oklahoma. Id. sec. 1222.

<sup>25</sup> Oregon Laws, 1910 sec. 7109; form on p. 1053. The form of acknowledgment by a single person is the same as the above, omitting the words relating to the wife. Sec. 7114. id. The requirement of a separate acknowledgment by the

wife is not now in force. Acknowledgments without the state may be taken, either according to the laws of Oregon or of the state where taken, before a commissioner appointed by the governor of Oregon, judge of a court of record, justice of the peace, notary public, or other officer authorized to take acknowledgments. Oregon Laws 1910 sec. 7110. And, unless taken by a commissioner, notary, or clerk of a court of record, must be authenticated. Id. sec. 7111.



sworn [or affirmed], did say that he is the president [or other officer, officers or agent of the corporation] of [describing the corporation], and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A.... B.... acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal this the day and the year first in this my certificate, written.

[OFFICIAL SEAL]

O.... P....  
[Title of officer taking acknowledgment.]

### 56. Acknowledgment, Texas form.<sup>26</sup>

[Venue.]

Before me [here insert the name and character of the officer] on this day personally appeared A.... B...., known to me [or proved to me on the oath of C.... D....] to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this .... day of ....., 19..

[OFFICIAL SEAL]

O.... P....  
[Official title.]

### 57. Proof of instrument by witness. Texas form.<sup>27</sup>

[Venue.]

Before me [here insert the name and character of the officer], on this day personally appeared A.... B...., known to me [or proved to me on the oath of C.... D...., a competent

<sup>26</sup> Tex. Civ. Stats. Ann. 1913 art. 6804. Acknowledgments without the state may be made by a commissioner appointed under the laws of Texas, the clerk of a court of record, or a notary public. Id. art. 6798.

<sup>27</sup> In lieu of an acknowledgment, the instrument, to entitle it to be

recorded, may be "proved" by a subscribing witness according to the form here given. Tex. Civ. Stats. Ann. 1913 art. 6808, 6823. The following states have similar provisions, viz.: Ark. Dig. of Stats. 1904 sec. 746; Cal. C. C. 1906 secs. 1195, 1196; Colo. Stats. Ann. 1911 sec. 693; Idaho Rev. Codes 1908

and credible witness for that purpose, by me duly sworn], to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw E.... F...., the grantor or person who executed the foregoing instrument, subscribe the same [or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed], and that he had signed the same as a witness at the request of the grantor [or person who executed the same].

Given under my hand and seal of office this .... day of  
..... A. D. ....

[OFFICIAL SEAL]

O.... P....  
[Official title.]

### 58. Acknowledgment, Utah form.<sup>28</sup>

[Venue.]

On the .... day of ....., A. D. 19.., personally appeared before me A.... B...., the signer of the above instrument, who duly acknowledged to me that he executed the same.

[OFFICIAL SEAL]

O.... P....  
[Official title.]

### 59. Acknowledgment by corporation (Utah Comp. Laws 1907 sec. 1989).

[Venue.]

On the .... day of ....., A. D. 19.., personally appeared before me A.... B...., who, being by me duly sworn [or affirmed], did say that he is the president [or other officer or agent, as the case may be] of [naming the corporation], and

secs. 3136, 3137; Iowa Ann. Code 1897 sec. 2949, 2950; Mo. R. S. 1909 secs. 2802, 2803; Mont. Rev. Codes 1907 sec. 4669, 4670, 4671; N. Dak. Rev. Codes 1905 sec. 5017, 5018; S. Dak. Civ. Code 1908 sec. 976, 977; Neb. R. S. 1913 sec. 6196, 6208; Oregon Laws 1910 sec. 7120; Utah Comp. Laws 1907 sec. 1994.

<sup>28</sup> Utah Comp. Laws 1907 sec. 1989. Acknowledgments without the state may be taken before the judge or clerk of a court having a seal, a notary public, or a commissioner appointed by the governor of Utah. Utah Comp. Laws 1907 sec. 1985. Or by the official deputy of such officer in the name of his principal. Id. sec. 1986.

that said instrument was signed in behalf of said corporation by authority of its by-laws [or by resolution of its board of directors *as the case may be*], and said A.... B.... acknowledged to me that said corporation executed the same.

O.... P....

[OFFICIAL SEAL]

[Official title.]

**60. Acknowledgment where grantor unknown to officer (Utah Comp. Laws 1907 sec. 1990).**

[Venue.]

On this .... day of ....., A. D. 19.., personally appeared before me A.... B...., satisfactorily proved to me to be the signer of the above instrument by the oath of C.... D...., a competent and credible witness for that purpose, by me duly sworn, and he, the said A.... B...., acknowledged that he executed the same.

O.... P....

[OFFICIAL SEAL]

[Official title.]

**61. Proof of instrument by subscribing witness, Utah form.<sup>29</sup>**

[Venue.]

On this .... day of ....., A. D. 19.., before me personally appeared A.... B...., personally known to me [or satisfactorily proved to me by the oath of C.... D...., a competent and credible witness for that purpose, by me duly sworn] to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in ..... county of ....., and state of Utah; that he was present and saw E.... F...., personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said E.... F....

O.... P....

[OFFICIAL SEAL]

[Official title.]

<sup>29</sup> Utah Comp. Laws 1907 sec. 1994. See Texas statutory form, supra, and note thereto, citing similar statutes in other states.



**62. Acknowledgment, Washington form.<sup>30</sup>**

[Venue.]

I [here give the name of officer and official title] do hereby certify that on this . . . . day of . . . . ., 19. . ., personally appeared before me [name of grantor, and if acknowledged by wife, her name, and add "his wife"], to me known to be the individual [or individuals] described in and who executed the within instrument, and acknowledged that he [she or they] signed and sealed the same as his [her or their] free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this . . . . day of . . . . ., 19. . .

O . . . . P . . . .

[OFFICIAL SEAL]

[Official title.]

**63. Acknowledgment by corporation (Wash. Rem. and Bal. Code 1910 sec. 8761 $\frac{1}{2}$ ).**

[Venue.]

On this . . . . day of . . . . ., A. D. 191. . ., before me personally appeared A . . . . B . . . . to me known to be the [president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be] of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

O . . . . P . . . .

[OFFICIAL SEAL]

[Official title.]

<sup>30</sup> Wash. Rem. and Bal. Code 1910 sec. 8761. If the acknowledgment be taken in another state, it may be before any officer authorized by the laws of that state to take acknowledgments or by any commissioner appointed by the governor of Washington for that purpose. *Id.* sec. 8755. If not taken before such

commissioner or before an officer having a seal of office there must also be a certificate of authentication by the clerk of the court of record of the district or county to the effect that the "person whose name is subscribed to the certificate of acknowledgment was at the date thereof of such officer as he therein repre-

**64. Acknowledgment. Wyoming form.<sup>31</sup>**

[Venue.]

I, [here give the name of the officer and his official title] do hereby certify that [name of the grantor, and if acknowledged by a wife, her name, and add "his wife"] personally known to me to be the same person whose name is [or names are] subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he [she or they] signed, sealed and delivered said instrument as his [her or their] free and voluntary act, for the uses and purposes therein set forth, [with the following addition where the right of homestead is released including the release and waiver of the right of homestead].

Given under my hand and seal this .... day of ....., 19..

[OFFICIAL SEAL]

O.... P....  
[Official title.]

**65. Admission of due service.**

Due and timely service of the within [give name of paper] is hereby admitted this .... day of ....., 19..

A.... B....  
Attorney for....

[Add acknowledgment if the admission is made by a person not an attorney.]

**66. Simple admission, not conceding it to be timely.**

Service of the within [give name of paper] is hereby admitted this .... day of ....., 19..

A.... B....  
Attorney for....

[Add acknowledgment if necessary.]

sents himself to be, that he is authorized by law to take acknowledgments of deeds and that he verily believes the signature of the person subscribed thereto to be genuine". Id. sec. 8756.

<sup>31</sup> Wyo. Comp. Stats. 1910 sec.

3644. If the instrument be executed in another state before an officer having no seal, the certificate of acknowledgment must be authenticated in substantially the same manner as provided by the Washington Statute. See note to Form 62.

## CHAPTER II.

### ASSIGNMENTS, NOTICES AND CLAIMS BEFORE ACTION

- |   |   |
|---|---|
| 67. Assignment of contract; general form.   | 84. Notice of personal injuries; Wisconsin.   |
| 68. Assignments of unliquidated claims.   | 85. The same, containing a detailed statement of the negligence and the injuries received.            |
| 69. Attorney's authority; general form.   | 86. Notice of application for appraisal of stock killed or injured by railroad company; South Dakota. |
| 70. Claim against estate of deceased person.                                      | 87. Appointment of appraisers to assess damages for live stock killed or crippled; South Dakota.      |
| 71. The same, by agent or attorney.   | 88. Oath of appraisers of live stock killed or crippled; South Dakota.                                |
| 72. Contingent claim against estate.  | 89. Report of appraisers of live stock killed or crippled; South Dakota.                              |
| 73. Claim for personal injuries, against municipal corporation.                   | 90. Claim for stock killed; South Dakota.   |
| 74. Another form, sidewalk injury.  | 91. Affidavit accompanying foregoing notice; South Dakota.  |
| 75. Notice of claim against city.   | 92. Demand for retraction of libel; Minnesota form.   |
| 76. Notice of claim against city on account.                                      | 93. Notice of claim for injury under Wisconsin Workmen's Compensation Act.                            |
| 77. Statement of claim for personal injury against town.                          | 94. Application for adjustment of claim under Wisconsin Compensation Act.                             |
| 78. Notice of claim against railroad company for stock killed; Wisconsin.         |   |
| 79. Claim for stock killed, another form, defective fencing.                      |   |
| 80. The same, for fire set by locomotive.   |   |
| 81. The same, another form.   |   |
| 82. Notice of personal injury to railroad employee; Kansas.                       |   |
| 83. Notice and affidavit of killing stock by railroad company; Iowa and Nebraska. |   |

At common law assignments of *choses in action* were held to carry the equitable not the legal interest, and hence the action was required to be prosecuted in the name of the original party, notwithstanding the assignment.

The code provision requiring all actions to be brought in the name of the real party in interest, however, has changed this rule and the action must now be brought by the assignee. An assignee takes the cause of action subject to all defenses existing at the time of the assignment. There may be a partial assignment, but if so all parties interested should join as plaintiffs in the action to enforce. The complaint must contain an allegation showing the assignment to the plaintiff.

The forms given in this chapter for claims or demands to be made before action are believed to be quite full and complete. The importance, however, of consulting the statute governing the particular case before serving his claim will, however, be recognized by every lawyer.

#### 67. Assignment of contract; general form.<sup>1</sup>

FOR VALUE RECEIVED [or IN CONSIDERATION OF.....dollars received]<sup>2</sup> I hereby assign and transfer to C.... D...., of .....\* the within [or annexed] note [or contract, lease, account, due-bill or bond] [if contract is not attached describe it fully] together with all sums due or to grow due me thereon, with interest, and all rights of action thereon [if covenant as to amount due is desired add]: and I hereby covenant that there is due thereon.....dollars with interest from....., 19..

WITNESS my hand and seal this....day of....., 19..

In Presence of:

A.... B.... [Seal]<sup>3</sup>

E.... F....

G.... H....

[Add acknowledgment if desired.]

#### 68. Assignments of unliquidated claims.<sup>4</sup>

[Proceed as in last preceding form down to the \* and add]:  
[For the unlawful conversion of personal property]: all claims and demands owned by me against E.... F.... and

<sup>1</sup>No set form of words is essential; if the words used clearly show a transfer of interest to the assignee it is sufficient.

<sup>2</sup>The debtor cannot question the consideration. *Crowns v. Forest*

*Land Co.*, 99 Wis. 10; 74 N. W. 546.

<sup>3</sup>Seal is unnecessary unless the contract assigned affects real property.

<sup>4</sup>The general rule now is that causes of action which survive are

arising out of the unlawful conversion by said E.... F.... of one certain lumber wagon, together with all rights of action accruing to me by reason of such conversion.

[*For breach of covenant*]: all claims and demands for damages caused by the breach of the covenant against incumbrances [*or other covenant, naming it*] contained in a certain deed of real estate in the city of....., state of....., executed by E.... F....., of....., to me, dated....., 19.., and recorded in volume.... of deeds on page.... in the office of the register of deeds [*or clerk or other proper officer*] of the county of.....

[*For damages arising from fraud affecting personal property*]: all my right, title and interest in ten certain shares of the .....company, numbered from one to ten inclusive, now owned by me, together with all claims and demands of every nature which I may have or be entitled to against any and all persons on account of any fraud or deceit practiced upon me and by reason of which my subscription to said stock was obtained [*or by reason of which said stock has been rendered less valuable*].

[*For a share of the profits of a joint enterprise*]: all claims and demands owned by me arising out of a joint adventure with one E.... F.... in the purchase and sale of a certain herd of cattle on or about....., 19.., together with all rights of action accruing to me on account thereof.

[*For a personal injury*]: all claims and demands owned by me against any and all persons and corporations arising out of the loss of my right arm on or about....., 19.., which loss was directly caused by the negligence [*or wrongful acts*] of the .....company, their agents and servants.

assignable. At common law as a general rule all causes of action arising out of contract (except purely personal contracts) survived, while causes of action founded on tort did not and, hence, were not assignable. The statutes of all or nearly all of the states have changed this rule, and it is now generally true that all causes of action founded on torts to property, real or personal, survive. Snyder vs. W. St. L. & P. Ry. Co. 86 Mo. 613; see Bliss, Code Pleading, sec. 38 *et seq.* where

the statutes of various code states are given. In Iowa and Wisconsin, at least, a right of action for tortious injuries to the person is assignable. Kinne's Pl. & Pr. sec. 56; Lehman v. Farwell, 95 Wis. 185; 70 N. W. 170. But a claim for damages resulting from a mere conspiracy to defraud not resulting in damage to any property is not assignable. Farwell Co. v. Wolf, 96 Wis. 10; 70 N. W. 289. See on this subject 2 A. & E. Ency. of Law, 2nd ed., art. Assignments, p. 1020; 4 Cyc., p. 23;



[*For false return*]: all claims and demands arising out of the neglect of E.... F...., sheriff of.....county to make return within the time required by law of an execution against property upon a judgment in the action of A.... B.... vs. C.... D...., and also all demands resulting from the making of a false return by said sheriff to said execution.

[*Close in each case as follows*]:

WITNESS my hand and seal this..day of....., 19..

In Presence of: A.... B.... [Seal]

G.... H....

I.... K....

[*Add acknowledgment if desired.*]

### 69. Attorney's authority; general form.<sup>5</sup>

I, A.... B...., hereby authorize C.... D...., attorney at law, to bring and prosecute an action in my name in the courts of the state of.....to recover possession of that certain piece or parcel of land described as follows [*insert description*].

[*General authority to bring actions*]: to bring and prosecute all actions and proceedings in my name in the courts of the state of.....which may be necessary or convenient in the transaction of my business or the enforcement of my rights in my said business.

[*General authority to defend*]: to appear in my behalf and defend all actions which may be brought against me in any of the courts of the state of.....

[*If suit has been commenced*]: hereby recognize and ratify the authority of C.... D...., attorney at law, to bring [*or to defend*] that certain action now pending in the.... court [*describing the action*].

[*Date.*]

A.... B....

Traer v. Clews, 115 U. S. 528. See also the statutes as to survival of causes of action in the various states.

<sup>5</sup>Written authority to commence or defend actions is not generally required. Wis. Stats. 1913 sec. 2595; Cal. C. C. P. 1906 sec. 283; Idaho Rev. Codes 1908 sec. 3998; Iowa Ann. Code 1911 sec. 319; Minn. Gen. Stats. 1913 sec. 4950; Mont. Rev. Codes 1907 sec. 6389; Mo.

R. S. 1909 sec. 1728; Neb. R. S. 1913 sec. 271; N. Dak. Rev. Codes 1905 sec. 502; S. Dak. Pol. C. 1908 sec. 699; Oregon Laws 1910 sec. 1083; Utah Comp. Laws 1907 sec. 115; Wash. Rem. & Bal. Code 1910 sec. 130, 131. But the court may, upon motion, require proof of authority and stay proceedings meantime. Iowa Ann. Code, 1897 sec. 320; Kans. Gen. Stats. 1909 sec. 434;

**70. Claim against estate of deceased person.<sup>6</sup>**

[Title of court.]

In the matter of the claim of A.... B.... against The Estate of C....D...., Deceased.
---

[Venue.]

A.... B.... being duly sworn says that the said C.... D.... was in his lifetime, and the estate of the said C.... D...., deceased, is now indebted to this deponent [or to the firm of A.... B.... and E.... F.... of which this deponent is one] upon a certain promissory note in writing, a copy of which note, with all endorsements thereon is hereto attached [or upon an open account for goods sold and delivered, a copy of which account duly itemized is hereto attached] in the sum of.....dollars with interest thereon at six per cent from..... 19..; that the said claim is just and true, and the amount thereof is justly due; that no payments have been made thereon which are not credited, and that there are no off-sets to the same to the knowledge of affiant.

A.... B....

[Jurat.]

[Serve upon executor or administrator, or file with the proper court as required by the statutes of the particular state.]

Minn. Gen. Stats. 1913 sec. 4951; Mont. Rev. Codes, 1907 sec. 6423; N. Dak. Rev. Codes, 1905 sec. 503; S. Dak. Pol. Code 1908 sec. 700; Okla. Comp. Laws, 1909 sec. 260; Oregon Laws, 1910 sec. 1085; Utah Comp. Laws, 1907 sec. 116; Wash. Rem. and Bal. Code 1910 sec. 132; Wyo. Comp. Stats. 1910 sec. 977; notice of which motion must be served upon such attorney at least five days before the trial of such motion. Ariz. R. S. 1913 sec. 281; Tex. Civ. Stats. Ann. 1913 art. 335. In Arkansas the defendant may question the attorney's authority by affidavit stating facts which

raise a reasonable presumption that he is acting without authority. See case in note to Ark. Dig. of Stats. 1904 sec. 446. See also Oregon Laws 1910 sec. 1084. An attorney may be disbarred for "corruptly or willfully" appearing without authority. Cal. C. C. P. 1906 sec. 287; Idaho Rev. Codes 1908 sec. 4002; Mont. Rev. Codes 1907 sec. 6393; Utah Comp. Laws 1907 sec. 120; Wash. Rem. and Bal. Code 1910 sec. 139.

<sup>6</sup>Wis. Stats. 1913 sec. 3838 *et seq*; Colo. Code Ann. 1911 sec. 7209; Iowa Ann. Code, 1897 sec. 3338; N.E.R. S. 1913 sec. 1382 *et seq*; Oregon Laws, 1910 sec. 1240; Wash. Rem. and

**71. The same, by agent or attorney.<sup>7</sup>**

[Title of court.]

<p>In the matter of the claim of  A.... B....  against  The Estate of C.... D....  Deceased.</p>
--

[Venue.]

E.... F.... being duly sworn says he is the agent [or attorney] of the above named claimant and makes this affidavit in his behalf; that the reason this affidavit is not made by the said A.... B.... is that the said claimant is a non-resident of this state and is not now within this state, and that all the facts with reference to this claim are within the personal knowledge of this affiant [*or state other facts showing why the claimant does not make the affidavit himself*]; that the said C.... D.... was in his lifetime and the estate of the said C.... D.... is now indebted to the said A.... B.... [*proceed as in Form 70 to the end*].

A.... B....

[Jurat.]

**72. Contingent claim against estate.<sup>8</sup>**

[Title of court and claim.]

[Venue.]

A.... B.... being duly sworn says that he is the owner of a certain contingent claim against the estate of the said

Bal. Code, 1910 sec. 1473; if claim be not due when presented, or be contingent, (see Form 72) the particulars of such claim must be stated; if affidavit made by person other than claimant, it must be stated why affidavit not made by claimant, Ariz. R. S. 1913 sec. 883; Ark. Dig. of Stats. 1901 sec. 114; Cal. C. C. P. 1906 sec. 1194; Idaho Rev. Codes, 1908 sec. 5464; Mont. Rev. Codes, 1907 sec. 7526 Minn. Gen. Stats. 1913 sec. 7323; Mo. R. S. 1909 sec. 201; N. Dak. Rev. Codes, 1905 sec. 8100; S. Dak. Proc. 1908 sec. 171; Okla. Comp. Laws, 1909 sec. 5278; Tex.

Civ. Stats. Ann. 1913, art. 3439; Utah Comp. Laws. 1907 sec. 3852; Wyo. Comp. Stats. 1910 sec. 5619; in Iowa the claim must be entitled in the name of the claimant against the executor or administrator as such. Iowa Ann. Code, 1897 sec. 3339; in Kansas the affidavit may be made by the agent of the claimant, if he is fully acquainted with the facts. Kans. Gen. Stats. 1909 sec. 3524.

<sup>7</sup> In a number of states, if the affidavit is made by an agent or person other than the claimant himself, the affiant must set forth in the



C.... D..., deceased, the particulars of which claim are as follows: that upon the....day of....., 19.., the said C.... D...., then in life guaranteed in writing the payment of a certain promissory note [a copy of which note is attached hereto], made by one E.... F.... and delivered to affiant, which note will become due upon the....day of....., 19.., whereby said deceased became contingently liable to pay to deponent the amount of said note when due, with interest, unless the same be paid by the maker thereof. That the affiant is still the owner and holder of said note, and that there are no offsets thereto. Wherefore the affiant prays that his said claim be duly allowed as a contingent liability against the estate of said deceased. [Or state concisely the particulars of the claim.]

A.... B....

[Jurat.]

### 73. Claim for personal injuries, against municipal corporation.<sup>9</sup>

To [insert corporate name of the municipal corporation or name of the officer or officers to whom the particular statute requires notice to be given].

You are hereby notified that on the....day of....., 19.., at about....o'clock..M., while traveling with due care on foot [or in a carriage drawn by a team of horses] upon a certain highway [or upon a certain public sidewalk on

affidavit the reason why it is not made by the claimant; see note to last preceding form.

<sup>8</sup> Contingent claims must be presented. Wis. Stats. 1913 sec. 3858; Ariz. R. S. 1913 sec. 882; Ark. Dig. of Stats. 1904 sec. 113; Cal. C. C. P. 1906 sec. 1493; Colo. Code Ann. 1911 sec. 7218; Idaho Rev. Codes 1908 sec. 5463; Iowa Ann. Code 1897 sec. 3343; Kans. Gen. Stats. 1909 sec. 3543; Mont. Rev. Codes 1907 sec. 7525; Minn. Gen. Stats. 1913 sec. 7323; Mo. R. S. 1909 sec. 190; Neb. R. S. 1913 sec. 1390; N. Dak. Rev. Codes 1905 sec. 8124; S. Dak. Pro. C. 1908 sec. 180; Oregon Laws, 1910 sec. 1239; Utah Comp. Laws 1907 sec. 3851; Wash.

Rem. and Bal. Code 1910 sec. 1472; Wyo. Comp. Stats. 1910 sec. 5618.

<sup>9</sup> A notice of this nature in case of a claim for personal injury against a town, village or city is now required in some states. Wis. Stats. 1913 sec. 1339; Minn. Gen. Stats. 1913 sec. 1786; Mo. R. S. 1909 sec. 9111 (cities of second class); Nebr. R. S. 1913 sec. 4992; N. Dak. Rev. Codes, 1905 sec. 2703; Okla. Comp. Laws 1909 sec. 703 (cities of the first class); Wash. Rem. and Bal. Code, 1910, secs. 7995 and 7998; Wyo. Comp. Stats. 1910 sec. 1712 (cities of the first class). The terms of the various statutes are somewhat different, and the time within which it must be served as well as the official upon

the north side of a certain highway in said town,—city or village—known as Washington Street,—or known as the Racine and Burlington road, or running east and west along the north line of section sixteen in said town, or otherwise describe the street or highway so as to clearly identify it] at a point in said highway [or upon said sidewalk] about twenty rods east of the section line between sections fifteen and sixteen, or in front of the residence of one John Smith, or one hundred feet west of the intersection of said highway with First Street, [or at about the middle of a certain bridge or culvert over Duck Creek or otherwise fix with reasonable certainty the place of the accident] the undersigned [or if notice is given by agent or attorney, one John Doe] was violently thrown to the ground and his leg broken and severe internal injuries sustained [or otherwise describe the injuries received] and his carriage wrecked [or his horses killed] by reason of the insufficiency and want of repair of said street [sidewalk or bridge] consisting of a deep excavation in said street [or adjacent to said sidewalk] into which he fell [or his carriage was thrown] on account of the absence of any guard or railing to protect travelers from falling therein [or otherwise fully describe the defect and the manner in which the accident occurred].

And you are further notified that satisfaction for such injuries and damage is claimed from said city [town or village] [to the amount of.....dollars].<sup>10</sup>

[Date.]

A.... B....

[or A.... B....

by C.... D....

his attorney].

[Verification if required by local statute.]

whom it must be served vary considerably, so that the particular statute should be carefully studied in preparing the notice. Generally it is required that the time, place and circumstances of the accident and the character of the defect claimed be stated, and all of these essential details should be carefully and fully set forth. Where, as in Wisconsin, there is no common law liability for injuries resulting from defects in highway, this notice is a condition

precedent to any liability, and too much care to make it complete and perfect cannot be taken. It must be alleged in the complaint and proven on the trial if denied. *Dorsey v. Racine*, 60 Wis. 292; 18 N. W. 928. It must state the place where the injury occurred with reasonable certainty. *Weber v. Greenfield*, 71 Wis. 234, 42 N. W. 101. Unless the statute otherwise provides, physical incapacity to give the notice within the required time will not extend the

**74. Another form, sidewalk injury.<sup>11</sup>**

To [name city, town, or proper official to whom notice is given].

Take notice that on the . . . . day of . . . . ., 19. . ., at about . . . . o'clock . . M., I received a severe bodily injury by reason of a defect in a certain sidewalk on the north side of Washington Street in the city of . . . . . at a point about two hundred feet west of the intersection of said street with First Street in said city. That the defect or insufficiency which occasioned said injury consisted of a hole in said sidewalk at said point about a foot in length and six inches deep, and of a sufficient width to receive the foot, into which while traveling on said sidewalk my foot accidentally slipped and was caught, throwing me to the ground with violence, dislocating my right ankle and causing other severe injuries. Take notice also that I claim satisfaction from said city [or town] for such injuries in the sum of . . . . . dollars.

[Date.]

A . . . . B . . . .

[Verification if required.]

**75. Notice of claim against city for personal injuries.<sup>12</sup>**

To A . . . . B . . . ., city clerk of the city of . . . . . [or other officer designated by the statute].

I, C . . . . D . . . ., of . . . . ., hereby make claim against the said city of . . . . . in the sum of . . . . . dollars for personal

time. Schmidt vs. Fremont, 70 Neb. 577; 97 N. W. 830; McCollum vs. So. Omaha, 84 Neb. 413; 121 N. W. 438.

<sup>10</sup> In Minnesota the amount of the damage claimed must be stated. Minn. Gen. Stats. 1913 sec. 1786. In North Dakota it must be *signed by the claimant and verified*, and the amount of the claim should be stated. N. Dak. Rev. Codes 1905 secs. 2172, 2173; Neb. R. S. 1913 sec. 5192 (cities of the second class); Utah Comp. Laws 1907 sec. 213.

<sup>11</sup> This notice is intended to be signed by the party injured. In some states this is necessary by statute, as is also a verification, while in others an unverified notice is sufficient and it may be given by the agent or attorney. In all cases

close attention to the statute is necessary.

<sup>12</sup> Some statutes forbid actions against the city and require the claim to be filed with the clerk or comptroller, and provide for an appeal from the action of the council as the only means of getting the claim into court. In other jurisdictions a claim of this kind must be made and rejected before an action can be brought. The above form will generally be found sufficient in either case, but the statute should be carefully studied and followed. This claim is sometimes necessary in case of injuries received from defective highways, and in addition to the claim covered by the immediately preceding forms.

injuries received by me under the following circumstances: On the . . . day of . . . . ., 19.., while I was traveling on foot on the sidewalk on the north side of State Street in said city, I slipped and fell upon a large mound of ice which had been negligently allowed to accumulate and remain upon said sidewalk at a point one hundred feet west of the intersection of said State Street with First Street, thereby breaking my right leg and suffering other severe and permanent bodily injuries, and was put to great expense for medical attendance, nursing, and other expenses, for all of which injuries and expenses I claim the said sum of.....dollars damages.

[Date.]

C.... D....

[Verification if required.]

#### 76. Notice of claim against city on account.

To A.... B...., city clerk of the city of..... [or other officer designa ed by the statutes].

Take notice that I, the undersigned, claimant, of..... hereby make claim against the said city of..... in the sum of.....dollars, upon an open account for services performed by me for said city [or for goods and merchandise sold and delivered by me to said city] a true copy of which account is hereto attached, marked Exhibit A [Attach copy of account verified as in Form 14.]

[Date.]

A.... B....

Claimant.

#### 77. Statement of claim for personal injury against town.<sup>13</sup>

To the Town of....., its Supervisors and Board of Audit.

I, the undersigned claimant, of....., have and hereby present a claim against said town for the sum of..... dollars, which claim arises on account of a personal injury received by me under the following circumstances:

<sup>13</sup> Wis. Stats. 1913 sec. 824. This form is drawn with special reference to the Wisconsin statute, but will doubtless be found substantially suf-

ficient in other jurisdictions with such minor changes or additions as the local statute may require.

[Here set forth facts of the injury, specifying time and place and injuries received with particularity, substantially as in the notice of injury.]

That by reason of said injuries I was a long time sick, sore, lame and disabled [and have been permanently crippled].

The items of my claim are:—

Damages resulting from personal injury.....	\$
Expenses for medical care, nursing and medicines .....	
Loss resulting from being confined and kept from attending to my business .....	

Amount.....\$

which I claim from said town.

Due written notice of said injury and damage, the place where it occurred, and describing generally the insufficiency and want of repair of said highway which occasioned it, and that satisfaction therefor was claimed by me of said town, was on the .... day of ....., 19.., served on X.... Y...., one of the supervisors of said town, reference to which is hereby made.

Dated....., 19..

A.... B...., Claimant.

### 78. Notice of claim against railroad company for stock killed (Wisconsin).<sup>14</sup>

To the.....Railroad Company.

Take notice that on the....day of....., 19.., while your servants and agents were operating an engine and train of cars upon your railroad at a point thereon about forty rods west of the point where said railroad crosses that certain highway in the town of....., county of....., and state of Wisconsin, known as the Bloomington road [*or otherwise describe the place of accident with certainty*], the said agents and servants negligently ran said engine and train upon and killed [*or injured*] one certain roan mare belonging to A....

<sup>14</sup>This form and the three forms immediately following are prepared specially to meet the requirements of Wis. Stats. 1913 sec. 1816*b*, which

requires the giving of such a notice within one year after the accident, unless the action be brought and the complaint served within the year.



B.... of said town, and further that satisfaction therefor is hereby claimed from you.

Dated....., 19..

A.... B....., Owner.

[or C.... D....

Attorney, or Agent, of  
said A.... B....]

[To be served as a summons is served upon a railroad corporation. See Wis. Stats. 1913 sec. 2637.]

### 79. Claim for stock killed, another form, defective fencing.<sup>15</sup>

To the.....Railroad Company.

Take notice that on the....day of....., 19.., at the town of....., county of....., on the railroad track running through the....quarter of the....quarter of section ....in said town [range....], your locomotive and car there passing ran over and killed the following stock owned by me [or owned by A.... B....]; [here describe the same particularly], all of the value of ..... dollars, said stock having escaped upon said track through fences negligently suffered by you to remain defective and insufficient; and you will further take notice that satisfaction therefor in the said sum of ..... dollars is hereby claimed and demanded of you.

[Date.]

A.... B....., Owner.

[or C.... D....., Attorney

o Agent of said A.... B....]

### 80. The same, for fire set by locomotive.

To the.....Railroad Company.

Take notice that on the....day of....., 19.., fire was negligently allowed to escape by your agents and servants from a defective engine then being operated by your agents and servants at that point upon your railroad where the same crosses the farm of A.... B.... in section sixteen in the town of....., county of..... and state of Wisconsin [or otherwise describe the place with certainty], and that such fire was negligently allowed to spread upon and into the field of

<sup>15</sup>This form will also answer the purpose of a demand as required by Kans. Gen. Stats. 1909 sec. 7002.

the said A.... B...., immediately adjoining your said railroad in said section and destroyed two certain stacks of hay, the property of said claimant; and further that satisfaction for such hay, so destroyed, is hereby claimed from you.

Dated....., 19..

A.... B...., Owner.  
[or C.... D...., Attorney  
or Agent of said A.... B....]

[To be served as a summons is served.]

### 81. The same, another form.

To the.....Railroad Company.

Take notice that on the...day of....., 19.., at the town of....., in the county of....., Wisconsin, a fire was negligently set from one of your locomotives on lands owned by me, to-wit: [*here describe the lands*] over [*or along*] which your railroad runs; that the fire so set then and there destroyed certain property owned by me as follows: [*here specify the nature of the injury and the property destroyed*]; that said damage having been caused by the negligence of you, the said company, satisfaction therefor is claimed of you.

Dated....., 19..

A.... B...., Owner.

### 82. Notice of personal injury to railroad employee (Kansas.)<sup>16</sup>

To the.....Railway Company.

Take notice that on the...day of....., 19.., at..... [*state the place of the accident with particularity*] the undersigned, who was then and there employed by you in the capacity of brakeman [*or state the capacity according to the fact*] received the following personal injuries [*state them in detail*], and that said injuries were so received by reason of the negligence and mismanagement of the engineer and other of your employees who were then and there operating one of

<sup>16</sup> In Kansas a railway employe injured by the mismanagement or negligence of another employe of the company is given a remedy in damages, and required to give a notice of the time and place of his injury within

eight months after the accident or after his discharge from a hospital, unless the action be brought within said eight months. Kans. Gen. Stats. 1909 sec. 6999.



the trains upon your railroad, in failing to give notice of the movements of a locomotive engine [*or otherwise state generally the negligence according to the fact*]. You will also take notice that the undersigned suffered damages on account of such injuries in the sum of .....dollars, payment of which sum is hereby demanded of you.

[Date.]

A.... B....

### 83. Notice and affidavit of killing stock by railroad company (Iowa and Nebraska).<sup>17</sup>

To the.....Railroad Company.

Take notice that on the....day of....., 19.., while an engine [and train of cars] was being operated by your employees upon your railroad in the town of....., county of....., state of Iowa, at a point on said railroad where you had a right [*in Nebraska say, where you were required*] to fence the same but had not done so, to-wit [*locate point with certainty*], said engine [*or engine and train*] was run upon a roan mare belonging to the undersigned, then running at large, of the value of.....dollars, whereby said mare was killed [*or injured*], and you are requested to pay said sum within thirty days from the service of this notice on you.

Dated....., 19..

A.... B....

[Venue.]

A.... B.... being duly sworn deposes and says that on the....day of....., 19.., he was the owner of a certain roan mare of the value of.....dollars, and that on said day the same was killed [*or injured*] on the line of the..... railroad, in the town of....., county of....., state of....., by an engine [and train of cars] being then and there run upon and over said mare by the employees of said railroad company while she was running at large at a point where said

<sup>17</sup> In Iowa this notice is necessary only to entitle the plaintiff to recover double damages. It is to be served upon any officer or station or ticket agent employed by the corporation in the county where the injury occurred, by delivery of the

original affidavit and notice. See notes to Iowa Code sec. 2055. In Nebraska a statute giving double damages after the serving of such a notice has been held unconstitutional. *G. I. & W. C. R. vs. Swierbank* 5, Neb. 521; 71. N. W. 48.

railroad company had the right to fence their road but had not done so.

A.... B....

Subscribed and sworn to before me and in my presence by the said A.... B.... this....day of....., 19..

C.... D....

[SEAL]

Notary Public.....County.

#### 84. Notice of personal injuries (Wisconsin).<sup>18</sup>

To C.... D....

Take notice that on the....day of....., 19.., at [*state place of injury with particularity*], the undersigned [*or A.... B....*] received the following personal injuries [*state them in detail*]; that said injuries were received [*state manner in which they were received*] and that I [*or said A.... B....*] claim[s] satisfaction for said injuries from you on the following grounds [*state grounds on which defendant's liability is claimed. If it be on the ground of negligence state the particulars in which defendant was negligent see Chapter LIX, infra, on complaints in actions for negligence. It was held in Drinkwater v. Andrew, 126 Wis. 241; 105 N. W. 575, that the above named section, requiring the giving of notice of personal injuries within one year after the happening of the event, is not applicable to an injury inflicted by assault and battery.*]

Dated....., 19..

A.... B.... [*or G....H....,*  
Attorney for A.... B....]

#### 85. The same, containing a detailed statement of the negligence and the injuries received.

To C.... D....

YOU ARE HEREBY NOTIFIED that the undersigned A.... B...., of..... and County of....., state of Wisconsin, on the....day of....., 19.., in the factory owned and operated by you in the city of....., received and sustained a severe shock and personal injuries as follows: Bruises and fracture of certain bones of the fingers of the left hand, and other severe bruises, necessitating the ampu-

<sup>18</sup> Wis. Stats. 1913 sec. 4222 subd. 5; such a notice is necessary in Wisconsin unless the action be brought

and the complaint served within two years after the happening of the accident.

tation of three fingers and resulting in the total loss of the use of said left hand;

That such injuries were received in the following manner, to-wit: the undersigned was, between two and three o'clock in the afternoon of said day, engaged in operating a machine at which he had been placed and directed to work by your foreman, and while so engaged had his hand caught and crushed beneath the hammer or weight of the machine at which he was working, and which said hammer or weight, without notice or warning to him, the undersigned, and because of the defective and dangerous condition of said machine, was suddenly released so as to fall upon the hand of the undersigned;

That said injuries were sustained as hereinbefore stated because of your fault and negligence in failing and neglecting to provide the undersigned with a machine reasonably safe and suitable for use and your further failing and neglecting to instruct and caution the undersigned of the dangerous nature and character of said machine, and further of the dangerous nature of the work which the undersigned was at the time directed to do, and which he, because of youth, inexperience and want of general capacity, failed to appreciate.

That the undersigned suffered great pain of body and mind because of said injuries; that because of said injuries it was necessary to remove three of the fingers from his said left hand, thereby partially disabling him from engaging in and performing manual labor, all to his damage in the sum of Five Thousand Dollars [\$5,000.00]; that as said injuries were caused by your negligence as aforesaid, satisfaction is claimed therefor from you.

A.... B....

### 86. Notice of application for appraisal of stock killed or injured by railroad company (South Dakota).<sup>19</sup>

To the.....Railroad Company, and to C.... D...., a station agent of said company.

You are hereby notified that on the....day of....., 19.., at....o'clock..M. of that day I shall apply to L....

<sup>19</sup>This form and the three immediately following have been prepared to meet the requirements of the laws

of South Dakota. S. Dak. C. C. P. 1908 sec. 749.

M. . . . , Esq., a justice of the peace in and for said county of . . . . . , at his office in the . . . . of . . . . . , in said county, for the appointment of three appraisers to affix a value upon that certain roan mare which was the property of the undersigned, and which was killed [or crippled] by being run over by an engine and train of cars operated by the employees of said railroad company on the . . . . day of . . . . . , 19. . . , at [describe the place of the accident].

Dated . . . . . , 19. . .

A. . . . B. . . .

**87. Appointment of appraisers to assess damages for live stock killed or crippled (South Dakota).**

[Venue].

In the matter of the application of A. . . . B. . . . for the appointment of appraisers to affix value of certain stock alleged to have been killed [or crippled] by the . . . . . Railroad Company . . . . .

Application having been duly made to me, after notice duly given, by A. . . . B. . . . for the appointment of appraisers to affix the value to certain live stock, the property of said A. . . . B. . . . , alleged to have been killed [or crippled] by the . . . . . Railroad Company, on the . . . . day of . . . . . , 19. . . , in the town of . . . . . , in said county of . . . . .

NOW THEREFORE I do hereby appoint F. . . . E. . . . , G. . . . H. . . . , and I. . . . K. . . . , three discreet and disinterested citizens of said county of . . . . . , a board of appraisers, who shall examine the horses [cattle or stock] so killed [or crippled] and affix a value upon the same [if killed] [or assess the damages to the same, if crippled] and make due return of their proceedings to me as required by law with all convenient speed.

Dated . . . . . , 19. . .

C. . . . D. . . .  
Justice of the Peace,  
. . . . . County.

### 88. Oath of appraisers of live stock killed or crippled (South Dakota).

[*Venue.*]

E.... F...., G.... H.... and I.... K...., being each duly sworn, each for himself says that he will well and truly examine all horses [cattle *or* stock] exhibited to him by A.... B.... and alleged to have been killed [*or* crippled] by the .....Railroad Company, and will justly and truly affix a value to the same if killed and assess the damages to the same if crippled, and will make written report to C.... D...., Esq., Justice of the Peace, describing the said horses, cattle or stock, and stating whether they were killed or crippled, and setting out the valuation or assessment of damages made by them and each of them; and further deponents say not.

E.... F....

G.... H....

I.... K....

Subscribed and sworn to before me this....day of....., 19..

C.... D....

Justice of the Peace

### 89. Report of appraisers of live stock killed or crippled (South Dakota).

[*Venue.*]

To C.... D...., Esq., Justice of the Peace.

The undersigned, who were appointed by you on the.... day of....., 19.., appraisers to examine the horses [cattle *or* stock] of A.... B...., alleged to have been killed [*or* crippled] by the .....Railroad Company, and affix a value upon the same [*if killed*] [*or* to assess the damages to the same *if crippled*] do hereby make the following report: We certify that we have duly examined the said stock and find the following stock was killed, viz:

One roan mare, 6 years of age, which we value at \$100.

One gray gelding, 5 years of age, which we value at \$90. and we further certify that the following stock was crippled, viz:



One black yearling colt damaged in the sum of \$25.

Respectfully submitted,

E.... F....	} Appraisers.
G.... H....	
I.... K....	

[Attach report and oath together and file with justice.]

**90. Claim for stock killed (South Dakota).<sup>20</sup>**

To the.....Railway Company.

You are hereby notified that on the....day of....., 19... at the town of....., certain cattle belonging to the undersigned were killed by reason of your failure to properly keep in repair the fence upon your railway at..... [*describe place with reasonable certainty*] [*or by reason of your failure to maintain a proper or sufficient cattle guard at..... name or describe the place*]. The said cattle so killed are more fully described in the affidavit hereto attached and served herewith.

[Date.]

A.... B....

[Attach affidavit, Form 91.]

**91. Affidavit accompanying foregoing notice (South Dakota).**

[Venue.]

A.... B...., being duly sworn says that on the.... day of....., 19..., at the town of....., certain cattle hereinafter described, the property of your affiant, were struck and killed by a certain railway locomotive then and there operated by the.....railway company. That said cattle were then and there upon the track and right of way of said railway company by reason of the failure to properly keep in repair its fence at [*describe place with reasonable certainty*] [*or by reason of the failure to maintain a proper and sufficient cattle guard at.....name and describe place*]. The cattle so killed are described as follows [*describe cattle*], and the full amount of the damage sustained by the undersigned by

<sup>20</sup> This and the following form are drawn to meet the requirements of Chapter 218, Laws of South Dakota for 1907, (S. Dak. Comp. Laws 1908, vol. 2 p. 443).



reason of the killing thereof is.....dollars, which sum the undersigned claims.

A.... B....

[*Jurat.*]

**92. Demand for retraction of libel (Minn. Gen. Stats. 1913 sec. 7901).**

To A.... B...., Publisher of the [*name newspaper*].

Please take notice that the statements published by you in the [*name newspaper*], concerning the undersigned, which statements are hereinafter specifically quoted were and are false, libelous and defamatory, and I hereby request that the same be withdrawn. The said statements were published in the said newspaper in its issue of the...day of....., 19.., on the first page and in the second column thereof and were as follows: [*give statements verbatim*].

Dated....., 19..

A.... B....

[*To be served at the principal place of publication.*]

**93. Notice of claim for injury under Wisconsin Compensation Act (Wis. Stats. 1913 sec. 2394-11).**

To [*name of employer*] [*address of employer*].

You will take notice that according to the provisions of Chapter 110a, Wisconsin Statutes [*name of claimant*] hereby makes claim for compensation for injury received by [*name of injured person*] while in your employ.

Name of employe.....[*insert name*].

Post Office Address..... [*give address*].

The accident occurred the...day of....., 191.., at ....., Wisconsin.

The nature of the injury is as follows: [*Briefly describe injury*].

[*Signature and address of claimant.*]

Dated at....., this...day of....., 19...

[*This notice should be filled out by injured employe or some one in his behalf. In case of death of the employe the notice should be filled out by dependent. Notice should be served on the employer within 30 days of accident by delivering a copy of the above notice to employer personally or by registered mail. A copy should also be mailed to the Industrial Commission, Madison, Wis.*]

94. Application for adjustment of claim under Wisconsin Compensation Act (Wis. Stats. 1913 sec. 2394-16).

STATE OF WISCONSIN.

A.... B...., Applicant,
vs.
C.... B...., Respondent.

The petition of the above named applicant respectfully shows:

- 1. State address of applicant
2. State occupation of applicant
3. State address of respondent
4. State general nature of claim in controversy, including time and place of accident
5. State kind of relief demanded
6. Wherefore the applicant prays that the said respondent be required to answer the charges herein and that an order or award be made by the Industrial Commission granting such relief as the applicant may be entitled to in the premises.

Dated at....., this....day of....., 191..

[Signature of applicant.]

[Either party to the dispute may apply to the Commission for an adjustment of the matter in difference. The original application and one copy for each respondent must be mailed to the Industrial Commission, Madison, Wis.]

## CHAPTER III.

### ARBITRATION

- |   |  |
|---|--|
| 95. Common law agreement of arbitration, submitting all demands.            | 106. Award of arbitrators.                                     |
| 96. Statutory agreement of arbitration, submitting all demands.             | 107. Notice of motion to confirm award.                        |
| 97. Statutory agreement of arbitration, submitting a single demand.         | 108. Notice of motion to vacate.                               |
| 98. Minnesota statutory form of arbitration.                                | 109. Notice of motion to modify award.                         |
| 99. Arbitration agreement, providing for appointment of a third arbitrator. | 110. Notice of motion to reject and recommit.                  |
| 100. The same, providing for the appointment of an umpire.                  | 111. Order confirming award.                                   |
| 101. Stipulation of parties extending the time.                             | 112. Order vacating award.                                     |
| 102. Agreement of arbitration, Kansas.                                      | 113. Order modifying award and directing judgment as modified. |
| 103. Oath of arbitrators.   | 114. Judgment upon award.                                      |
| 104. Notice of first meeting of arbitrators.                                | 115. Submission of controversy without action; New York.       |
| 105. Revocation of arbitration agreement.                                   | 116. Judgment upon submission; New York.                       |
|   | 117. Submission of controversy without action.                 |
|   | 118. Finding of court upon submission.                         |
|   | 119. Judgment on the foregoing finding.                        |

**95. Common law agreement of arbitration, submitting all demands.<sup>1</sup>**

WHEREAS certain controversies now exist between the undersigned A.... B...., of ....., and C.... C...., of .....,

NOW THEREFORE it is hereby agreed that the said controversies and all of them be and they hereby are

<sup>1</sup> At common law the agreement of arbitration may be made by parol; prudence requires, however, that it should be in writing. No judgment can be entered upon the award under

such an agreement, and if enforced it must be enforced by action brought upon the award. Wherever a statutory arbitration is provided for it should be resorted to.

submitted to E.... F...., of ....., and G.... H.... of ....., as arbitrators; the said arbitrators to hear and determine the same and make their award in writing on or before the .... day of ....., 19..

Witness our hands this .... day ....., 19..

In Presence of:

J.... K....

A.... B....

C.... D....

### 96. Statutory agreement of arbitration, submitting all demands.<sup>2</sup>

THIS AGREEMENT, made this .... day of ....., 19.. between A.... B...., of ....., and C.... D...., of .....

WITNESSETH that whereas certain controversies now exist between the said A.... B.... and C.... D...., in order that the same may be finally settled and determined, we, the said A.... B.... and C.... D.... do hereby agree that all differences and controversies now existing between us, of every kind and nature, which might be the subject of a civil action, be and the same are hereby submitted to the award and determination of E.... F.... as arbitrator [or E.... F.... and G.... H.... as arbitrators], who shall have full power and authority to hear and determine the said controversies, claims and demands, and shall make their award thereon in writing\* on or before the .... day of ....., 19..; and it is further agreed that the award so

<sup>2</sup>Most of the states provide by statute for arbitration but the provisions are not uniform. In Wisconsin the statutory agreement of arbitration is required to be witnessed by one or more witnesses and no acknowledgment is necessary; witnesses are not required in the following states: Cal. C. C. P. 1906 sec. 1282; Idaho Rev. Codes 1908 sec. 5261; but in the states of Minnesota, Iowa, Nebraska, North Dakota and Utah the agreement must be acknowledged like a conveyance of real estate, and in Nebraska and Minnesota such acknowledgment must be taken before a justice of the peace. Wis. Stats.

1913 sec. 3544; Colo. Codes Ann. 1911 sec. 314; Iowa Ann. Code 1897 sec. 4385; Minn. Gen. Stats. 1913 sec. 8016; Mo. R. S. 1909 sec. 869; Neb. R. S. 1913 sections 8219 and 8220; N. Dak. Rev. Codes 1905 sections 5980 and 5981; Tex. Civ. Stats. Ann. 1913 art. 57; Utah Comp. Laws 1907 sec. 3222. In Arizona it is specially provided that an umpire may be appointed by the arbitrators in case of disagreement. Ariz. R. S. 1913 sec. 1488. The statutes frequently require that the agreement specify the court in which judgment is to be rendered on the award, and in some states if so stipulated the agreement

made may be filed by the successful party with the clerk of the ..... court of ..... county, state of ..... and that judgment may and shall be rendered thereon and execution issued for its collection.

It is further agreed that said arbitrator shall receive [or arbitrators shall each receive] the sum of ..... dollars per day for his fees and expenses in the matter of this arbitration, the same to be taxed and allowed by the court as part of the costs of said arbitration.

In Presence of:

J.... K....

L.... M....

A.... B....

C.... D....

[Add acknowledgment, as in Form 15 et seq.]

### 97. Statutory agreement of arbitration, submitting a single demand.

THIS AGREEMENT made this .... day of ....., 19.., between A.... B...., of ....., and C.... D.... of .....

WITNESSETH, that whereas a certain controversy has arisen and now exists between the said A.... B.... and C.... D.... concerning a demand by the said A.... B.... against the said C.... D.... for the sum of ..... dollars, for services alleged to have been rendered by the said A.... B.... for the said C.... D.... as architect in drawing plans and specifications of a certain dwelling-house, which demand the said C.... D.... disputes and refuses to pay;

NOW, in order that the said controversy may be finally settled and determined it is hereby mutually agreed that the

may be filed or made a rule of court and it cannot then be revoked without the consent of both parties. Ark. Dig. of Stats. 1904 sec. 278; Cal. C. P. 1906 sec. 1283. In Arizona the agreement must be made by the parties as plaintiff and defendant, and filed with a justice of the peace or clerk of the Superior Court, and the proceeding takes the form of a civil action. Ariz. R. S. 1913 secs. 1481, 1482, 1483, 1486. In Kansas the arbitration agreement or bond must specify the time and place at which the arbitration is to be held. Kans. Gen. Stats. 1909 sec. 361. In certain

states the question of the title to real property, either in fee or for life, cannot be submitted. Wis. Stats. 1913 sec. 3545; Cal. C. C. P. 1906 sec. 1281; Minn. Gen. Stats. 1913 sec. 8016; Mont. Rev. Codes 1907 sec. 7365; N. Dak. Rev. Codes 1905 sec. 7692; Utah Comp. Laws 1907 sec. 3221. In Wyoming the question of the possession or title of real estate cannot be submitted; Wyo. Comp. Stats. 1910 sec. 4928; nor in Washington can any dispute as to the title of real estate be submitted. Wash. Rem. & Bal. Code 1910 sec. 420.



same be and is hereby submitted to the award and arbitration of E.... F.... as arbitrator [or E.... F.... and G.... H.... as arbitrators], who shall have full power and authority to hear and determine the said controversy and shall make their award thereon in writing [*proceed as in last preceding form from the \**].

### 98. Minnesota statutory form of arbitration.<sup>3</sup>

KNOW ALL MEN, that A.... B...., of ....., and C.... D...., of ....., have agreed to submit the demand described in the statement hereunto annexed [or all demands existing between them, as the case may be] to the determination of [*here insert the names of the arbitrators*] the award of whom [or a majority of whom] being made and reported within .... days from this date, to the district court of the county of ....., the judgment thereon shall be final.

Dated this .... day of ....., 19..

A.... B....  
C.... D....

### 99. Arbitration agreement, providing for appointment of a third arbitrator.<sup>4</sup>

THIS AGREEMENT, made this .... day of ....., 19.., between A.... B...., of ....., and C.... D...., of .....

WITNESSETH that whereas certain differences and controversies now exist between the said A.... B.... and C.... D...., in order that the same may be finally settled and determined, we, the said A.... B.... and C.... D...., do hereby agree that all differences and controversies now existing between us of every kind and nature which

<sup>3</sup>This form is prescribed by the statutes of Minnesota, and should be exactly followed in that state. Minn. Gen. Stats. 1913 sec. 8017. None of the other states covered by this work prescribe a form for the agreement.

<sup>4</sup>In New York (N. Y. Code sec. 2367) an additional arbitrator or umpire may be provided for in the agreement; but the statutes generally require the agreement to name the arbitrators; Ariz. R. S. 1913 sec.

1481; Tex. Civ. Stats. Ann. 1913 art. 57; and where there are no further provisions all the arbitrators must be named in the agreement of submission. Such is the express provision of Iowa and Nebraska. Iowa Ann. Code 1897 sec. 4386; Minn. Gen. Stats. 1913 sec. 8017; Neb. R. S. 1913 sec. 8219; *Holdridge v. Stowell*, 39 Minn. 360; 40 N. W. 259; *J. H. M. Works vs. Gray*, 9 Cal. App. 610; 99 Pac. 1110.



might be the subject of a civil action be and the same are hereby submitted \* to the award and determination of E.... F.... and G.... H.... and of such third person as the said E.... F.... and G.... H.... shall by writing, under their hands and to be endorsed upon this agreement, appoint to act with them, as arbitrators, who shall have full power and authority to hear and determine the said controversies, claims and demands, and shall make their award thereon in writing [*proceed as in Form 96 from the \**].

**100. The same, providing for the appointment of an umpire.**

[*Begin as in Form 99 to the \* and continue*]: to the award and determination of E.... F.... and G.... H.... as arbitrators, and in case they shall not agree, to the umpirage of J.... K.... [*or such person as the said arbitrators shall appoint*] which said arbitrators, or in case of their disagreement said umpire shall have full power and authority to hear and determine the said controversies, claims and demands, and shall make an award thereon in writing [*proceed as in Form 96 from the \**].

**101. Stipulation of parties extending the time.**

The within named A.... B.... and C.... D...., for ourselves and each of our heirs, executors and administrators, do hereby agree that the within named arbitrators shall have further time for making their award of and concerning the matters referred to them in this agreement, until the .... day of ....., 19..

Witness our hands this .... day of ....., 19..

Witness: E.... F.... A.... B....  
C.... D....

[*This stipulation should be endorsed upon the original agreement.*]

**102. Agreement of arbitration. Kansas.<sup>5</sup>**

[*Venue.*]

WHEREAS, there are certain matters in dispute between

<sup>5</sup>This is copied from the agreement of arbitration held valid in the case of Weir vs. West, 27 Kansas, 650. The question whether under the Kansas statutes an agreement could be made authorizing the two arbi-

A.... B.... and C.... D....; and whereas, it is the desire to settle said differences; now

THIS AGREEMENT WITNESSETH: That we, A.... B.... and C.... D....., have agreed, and by these presents do hereby agree, to arbitrate all matters of dispute between us, and for that purpose have selected E.... F.... and G... H.... as arbitrators, and we hereby agree to abide by the decision of said arbitrators.

And it is further agreed, that if said arbitrators can not agree, they are to select a third person, whose decision shall be final in the premises, subject to all lawful and legal objections.

And it is further agreed, that the award of said arbitrators be made a rule of the district court of the county of ....., state of .....; said arbitration to be according to the laws of the state of ....., and to be held at ....., in the county of ....., state of ....., on the .... day of ....., 19.., or at such time and place as such arbitrators shall agree upon.

Witness our hands, this .... day of ..... 19..

A.... B....

C.... D....

### 103. Oath of arbitrators.<sup>6</sup>

<p>In the Matter of the Arbitration of Differences between A.... B.... and C.... D....</p>	}
--	---

[Venue.]

E.... F.... and G.... H....., the arbit'ators appointed by the said A.... B.... and C.... D.... in the above-

trators to appoint an umpire or third arbitrator in case of disagreement was not raised in this case.

<sup>6</sup>This oath is drawn to meet the requirements in Wisconsin. Wis. Stats. 1913 sec. 3547. In Arizona and Texas the oath required is "that you will fairly and impartially decide the matter in dispute between A. B., the plaintiff, and C. D., the defendant, according to the evidence adduced and the law and equity applicable to

the facts proved, so help you God." Ariz. R. S. 1913 sec. 1484; Tex. Civ. Stats. Ann. 1913 art. 60. In Arkansas, "to decide the controversy to them submitted according to the law and evidence and the equity of the case, to the best of their judgment without favor or affection." Ark. Dig. of Stats. 1904 sec. 281. In California, "faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters

entitled matter, being each duly sworn, each for himself says that he will faithfully hear and examine the matters in controversy submitted to him by the said A.... B.... and C.... D.... in their agreement of arbitration and will make a just award thereon according to the best of his understanding.

E.... F....  
G.... H....

Subscribed and sworn to before me this .... day of .....,  
19..

I.... K....  
Notary Public, ..... County.

### 104. Notice of first meeting of arbitrators.

In the Matter of the Arbitration  
of Differences between A....  
B.... and C.... D....

We, the undersigned arbitrators appointed by the said  
A.... B.... and C.... D.... in their agreement in writing

in controversy and to make a just award according to their understanding." Cal. C. C. P. 1905, sec. 1285. In Colorado to "well and truly try and impartially and justly decide the matter in controversy according to the best of their ability." Col. Code Ann. 1911 sec. 315. In Idaho and Montana the oath is the same as in California; Idaho Rev. Codes 1908 sec. 5264; Mont. Rev. Codes 1907 sec. 7369. In Iowa, Missouri, Nebraska and Utah the oath is substantially the same in form as in Wisconsin. Iowa Ann. Code, 1897, sections 4389 and 3745; Mo. R. S. 1909 sec. 871; Neb. R. S. 1913 secs. 8223 and 7874; Utah Comp. Laws. 1907 sec. 3226. In Kansas and Wyoming the arbitrators must be sworn but the form of the oath is not prescribed by the statute. Kans. Gen. Stats. 1909 sec. 361; Wyo. Comp. Stats. 1910 sec. 4933. In Minnesota, under Minn. Gen. Stats. 1894 sec. 6216, instead of the words "and to

make a just award thereon according to the best of his understanding," it was deemed advisable to insert the words, "and make a just award according to the law and evidence." The provisions of sec. 6216 of the statutes of 1894, requiring the arbitrators to be sworn, seem, however, to have been omitted from the revision of 1905. See Minn. Rev. Laws 1905 sec. 4382; Gen. Stats. 1913 sec. 8018. In North Dakota the arbitrators must be sworn "to faithfully and fairly hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and make a just award according to their understanding." N. Dak. Rev. Codes 1905 sec. 7695. In Washington the oath is "to try and determine the cause referred to them and a just award make out under the hands and seals of a majority of them agreeably to the terms of the submission." Wash. Rem. & Bal. Code 1910 sec. 422.

dated on the .... day of ....., 19.., do hereby appoint the  
 .... day of ....., 19.., for proceeding to hear and decide  
 the matters in difference between the said A.... B....  
 and C.... D.... at the hour of .... o'clock, in the city of  
 ....., state of .....

To Messrs. A.... B....  
 and C.... D....

E.... F....  
 G.... H....  
 Arbitrators.

### 105. Revocation of arbitration agreement.<sup>7</sup>

In the Matter of the Arbitration  
 between A..... B..... and  
 C.... D....

To E.... F.... and G.... H...., Arbitrators.

Please take notice that we hereby revoke your power as  
 arbitrators under the submission made to you by us in writ-  
 ing dated the .... day of ....., 19..

Dated ....., 19..

A.... B....  
 C.... D....

### 106. Award of arbitrators.<sup>8</sup>

In the Matter of Arbitration of  
 of certain Differences between  
 A.... B.... and C.... D....

Award of Arbitrators.

The undersigned arbitrators, who were duly appointed and  
 agreed upon in the annexed agreement of arbitration to hear

<sup>7</sup> In Wisconsin, California, Idaho, Missouri, North Dakota and Utah either party may revoke before the cause has been finally submitted to the arbitrators for decision, being liable to the other party for costs, expenses and damages sustained in preparing for the arbitration. Wis. Stats. 1913 sec. 3565; Cal. C. C. P. 1906 sec. 1290; Idaho Rev. Codes 1911 sec. 5269; Mo. R. S. 1909 sec. 892; N. Dak. Rev. Codes 1905 sec. 7711; Utah Comp. Laws 1907 sec.

3231. In Minnesota neither party can revoke without the consent of the other. Minn. Gen. Stats. 1913 sec. 8016. Such is the law in Iowa and Nebraska; Iowa Ann. Code 1897 sec. 4390; Neb. R. S. 1913 sec. 8224.

<sup>8</sup> In Wisconsin, Minnesota and Missouri an award must be attested by at least one subscribing witness. Wis. Stats. 1913 sec. 3550; Minn. Gen. Stats. 1913 sec. 8018; Mo. R. S. 1909 sec. 874. In North Dakota it must be acknowledged like a con-

and determine all differences and controversies existing between A.... B.... and C.... D.... [*or if a certain particular controversy only was submitted state what it was in apt terms*] do hereby certify that on the .... day of ....., 19.., we took and subscribed the oath required by law of us as such arbitrators, which oath so taken s hereto attached, and that we gave to each of the parties to sa d submission .... days' notice in writing of our first meeting. We further certify that on the .... day of ....., 19.., at the hour of .... o'clock .. M., at the office of O.... P.... in the city of ....., in the state of ....., pursuant to such notice, we met and proceeded to hear the allegations and evidence of the parties, and that thereafter we duly adjourned from time to time until this .... day of ....., 19.., and having heard all of the evidence, proofs and arguments, we do hereby find and adjudge that there is now due and owing from the said C.... D.... to the said A.... B.... the sum of ..... dollars, which sum it is ordered that the said C.... D.... pay to the said A.... B.... within .... days from this day [*or otherwise state the conclusion of the arbitrators, which statement may be substantially in the forms hereinafter set forth in this work for judgments*]. We further certify that we, as arbitrators, have each been occupied in the hearing of said controversy and in preparing our award .... days [and that annexed hereto is a true statement of the witnesses present and the witnesses who were examined before us upon said arbitration, and the number of days that they were severally present].

Dated on the .... day of ....., 19..

In Presence of:

I.... K....

E.... F....

G.... H....

Arbitrators.

[*Add acknowledgment if required by statute.*]

veyance of real estate. N. Dak. Rev. Codes 1905 sec. 5985. In Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Montana, Nebraska, Utah, Washington and Wy-

oming the requirement is that the award be in writing, subscribed by the arbitrators or the majority of them who concur in the award.



**107. Notice of motion to confirm award.**

[Title of court.]

In the Matter of the Arbitration of Certain Controversies between A.... B.... and C.... D....
---

To C.... D...., Esq.

Please take notice that upon the award of E.... F.... and G.... H...., arbitrators, appointed by us in a certain agreement dated the .... day of ....., 19.., which said award was filed in the office of the clerk of the ..... court, on the .... day of ....., 19.., and upon the original agreement of arbitration attached to said award, as well as upon the evidence taken by said arbitrators and filed with said award [and upon the affidavit of W.... X.... and Y.... Z.... attached to this notice] the undersigned will move the said ..... court of ..... county, on the .... day of ....., 19.., at the opening of court on that day or as soon thereafter as counsel can be heard, for an order \* confirming said award and directing judgment to be rendered in accordance with the terms thereof.

Dated....., 19..

A.... B....

**108. Notice of motion to vacate.<sup>9</sup>**

[Proceed as in Form 107 to the \*]: vacating the said award for the reason that it appears upon the face thereof and from the papers upon which this motion is based that such award was procured by corruption, fraud and other means [or state such other grounds for the vacation of the award as are shown to exist and which are sufficient under the particular statute to entitle the party to vacation of the award].

Dated this .... day of ....., 19..

A.... B....

**109. Notice of motion to modify award.**

[Proceed as in Form 107 to the \*]: modifying and correcting the said award<sup>9</sup> in the following respects, to-wit: re-

<sup>9</sup>The award may be vacated or modified on motion in the following states: Wisconsin, Stats. 1913 sec. 3553; California, C. C. P. 1906 sec. 1287 and 1288; Idaho Rev. Codes

1908 sec. 5266 and 5267; Minnesota Gen. Stats. 1913 secs. 8020 and 8021; Missouri R. S. 1909 sec. 877-880; Montana Rev. Codes 1907 sec. 7371 and 7372; Utah Comp. Laws 1907 sec.



ducing the amount of said award from ..... dollars to ..... dollars [*or otherwise state specifically the particular modification which is desired in the award*] and directing judgment to be entered upon said award as so modified and corrected. Said motion is based upon the ground that the said arbitrators have made an evident miscalculation of figures in the said award [*or otherwise state the ground upon which the motion is based as may be provided by the particular statute*].

Dated this .... day of ....., 19..                      A.... B....

### 110. Notice of motion to reject and recommit.

[*Proceed as in Form 107 to the \**]; rejecting the said award for the following reasons [*state reasons*] and you will further take notice that a motion will also be made at the same time and place for an order recommitting the said matter to said arbitrators for a rehearing.

Dated this .... day of ....., 19..                      A.... B....

### 111. Order confirming award.<sup>10</sup>

[*Title of court.*]

<p>In the Matter of the Arbitration of certain Controversies between A.... B.... and C.... D....</p>
--

The above entitled matter having been brought to hearing before the court on the .... day of ....., 19.., upon the motion of A.... B.... to confirm the award made by E.... F.... and G.... H...., the arbitrators in the above entitled matter, which motion was based upon the said award and the agreement of arbitration and all papers filed with said award [as well as upon the affidavits of L.... M....

3228 and 3229. It may be rejected or recommitted in Iowa Ann. Code 1897 sec. 4397, and Nebraska R. S. 1913 sec. 8230. In Arkansas it may be set aside on exceptions filed, Ark. Dig. of Stats. 1904 sec. 287; in Wyoming it may be set aside, Wyo. Comp. Stats. 1910 sec. 4938; and in Washington it may be referred back

to the arbitrators and amendment directed, Wash. Rem. and Bal. Code 1910 sec. 425.

<sup>10</sup> Wis. Stats. 1913 sec. 3551; Minn. Gen. Stats. 1913 sec. 8019-8022; Mo. R. S. 1909 sec. 875; Neb. R. S. 1913 sec. 8231; N. Dak. Rev. Codes 1905 sec. 7698.

and N.... O....]; after hearing C.... D.... in opposition to said motion [as well as the affidavits of P.... Q.... and R.... S.... filed in opposition thereto], the court being now fully advised with regard to said matter;

IT IS ORDERED that the said award be and the same is hereby in all respects confirmed, and that judgment be entered in favor of the said A.... B.... adjudging that [*here state the particular judgment to be rendered*].

Dated this .... day of ....., 19.. By the Court:

I.... K....

Judge.

### 112. Order vacating award.

[*Title as in Form 111.*]

The above entitled matter having been brought to hearing before the court, on the .... day of ....., 19.., upon the motion of C.... D.... to vacate the award of E.... F.... and G.... H...., the arbitrators in the above entitled matter, which motion was based upon the said award and the agreement of arbitration and all papers filed with said award [as well as upon the affidavits of L.... M.... and N.... O....]; after hearing A.... B.... in opposition to said motion [as well as the affidavits of P.... Q.... and R.... S.... filed in opposition thereto] the court being now fully advised with regard to said matter;

IT IS ORDERED that the said award be and the same is hereby in all respects rejected, vacated and set aside. [*If a rehearing by the arbitrators is ordered:* and that the said matter be and the same is hereby referred back to said arbitrators and a rehearing of said controversy be had by the said arbitrators with all convenient speed.]

Dated this .... day of ....., 19.. By the Court:

I.... K....

Judge.

### 113. Order modifying award and directing judgment as modified.

[*Title as in Form 111.*]

The above entitled matter having been brought to hearing before the court on the .... day of ....., 19.., upon the motion of A.... B.... to modify and correct the award of

E.... F.... and G.... H...., the arbitrators in the above entitled matter, which motion was based upon the said award and the agreement of arbitration and all papers filed with said award [as well as upon the affidavit of L.... M.... and N.... O....]; after hearing C.... D.... in opposition to said motion [as well as the affidavits of P.... Q.... and R.... S.... filed in opposition thereto] the court being now fully advised with regard to said matter;

IT IS ORDERED that the said award be and the same is hereby modified and corrected as follows [*here state particularly the respects in which the award is modified and corrected*]; and it is further ordered that judgment be rendered upon the said award as herein modified and corrected.

Dated this .... day of ....., 19... By the Court:

I.... K....

Judge.

#### 114. Judgment upon award,

[*Title as in Form 111.*]

AT A TERM of the ..... court of the county of ....., held on the .... day of ....., 19.., and on the .... day of ....., 19.., being a day of said term, the above entitled matter having come on to be heard and the court having upon due notice and hearing confirmed [*or modified and corrected*] the award of E.... F.... and G.... H...., the arbitrators in said matter, and having ordered judgment to be rendered upon the said award so confirmed [*or, so modified and corrected*];

IT IS HEREBY ADJUDGED and determined [*set forth the judgment rendered in accordance with the order, stating the relief granted as in ordinary judgments*].

Dated this .... day of ....., 19... By the Court:

I.... K....

Clerk.

#### 115. Submission of controversy without action (New York; N. Y. Code sec. 1279).

[*Title of court.*]

A.... B...., Plaintiff, vs. C.... D...., Defendant.
---

There being a controversy between the above named parties, it is hereby agreed by the said parties that the same be submitted to the court for the determination of said controversy; and it is further agreed that the following is a statement of the facts upon which said controversy depends [*state all the facts as in a pleading*].

It is further agreed that this submission shall be filed with the county clerk of ..... county, and that the facts herein stated are admitted by the parties for the purpose of this submission only and are not to be construed as admissions binding either party save for the purposes of this proceeding.

Upon said facts the plaintiff demands judgment that [*state relief desired by the plaintiff*], and the defendant demands judgment that [*state relief desired by the defendant*].

[Date.]

A.... B....  
C.... D....

[Venue.]

A.... B.... and C.... D...., being each duly sworn, each for himself says that the controversy named in the foregoing statement of facts and submission is a real controversy and that the said submission is made in good faith for the purpose of determining the rights of the parties.

A.... B....  
C.... D....

[Jurat.]

[Add acknowledgment or proof and certificate in like manner as in a deed.]

### 116. Judgment upon submission (New York; N. Y. Code sec. 1281).

[Caption as in Form 8.]

The parties above named having agreed upon a case and the same having been duly verified and submitted to this

court, after hearing M.... N...., Esq., for the said A.... B...., and O.... P...., Esq., for the said C.... D...., the court being now fully advised; on motion of M.... N...., Esq., attorney for said A.... B.... [or O.... P...., Esq., attorney for the said C.... D....];

IT IS HEREBY ADJUDGED that [*here state the relief granted, using the proper form as in other judgments*].

### 117. Submission of controversy without action.<sup>11</sup>

To the ..... Court for ..... County, State of .....

The undersigned, A.... B...., of ....., and C.... D...., of ....., in said state, being parties to a controversy which might be the subject of a civil action, hereby agrees that the following is a true statement of the facts concerning such controversy, and we hereby submit the same to this court for its judgment and determination herein as provided by statute [*here state the facts in full*].

Upon said facts the plaintiff prays judgment [*state the judgment desired by the plaintiff*], and the defendant prays judgment [*state the judgment desired by the defendant*].

Dated this .... day of ....., 19..

A.... B....  
C.... D....

[*Venue.*]

A.... B.... and C.... D...., being each duly sworn, each for himself says that the facts stated in the foregoing submission are true and that the said controversy is real and these proceedings are had in good faith to determine the rights of the parties.

A.... B....  
C.... D....

[*Jurat.*]

<sup>11</sup> Wis. Stats. 1913 sec. 2788; Ariz. R. S. 1913 sec. 510; Ark. Dig. of Stats. 1904 sec. 6280; Cal. C. C. P. 1906 sec. 1138; Colo. Code Ann. 1911 sec. 309; Idaho Rev. Codes 1908 sec. 5068; Iowa Ann. Code 1897 sec. 4377; Kans. Gen. Stats. 1909 sec. 6144; Minn. Gen. Stats. 1913 sec. 7920; Mo. R. S. 1909 sec. 2117; Mont. Rev. Codes 1907 sec.

7254; Neb. R. S. 1913 sec. 7719; N. Dak. Rev. Codes 1905 sec. 7845; S. Dak. C. C. P. 1903 sec. 787; Okla. Comp. Laws 1909 sec. 6051; Oregon Laws 1910 sec. 193; Tex. Civ. Stats. Ann. 1913 art. 1949; Utah Comp. Laws 1907 sec. 3218; Wash. Rem. and Bal. Code 1910 sec. 378; Wyo. Comp. Stats. 1910 sec. 4517.



**118. Finding of court upon submission.**[*Title of court.*]

A.... B...., <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> C.... D...., <div style="text-align: right;">Defendant.</div>	}
--	---

The parties above named having duly submitted to this court a statement of certain facts duly agreed upon with reference to a certain controversy existing between them, and having prayed the determination of this court thereon, and the said matter having been duly heard at a regular term of this court, E.... F...., Esq., appearing for the said plaintiff, and G.... H...., Esq., appearing for the said defendant; the court now finds upon the facts so submitted, as conclusions of law [*here state the conclusions of the court, following the proper form of a finding in a case tried before the court.*]

Let judgment be entered accordingly.

Dated this .... day of ....., 19.. By the Court:

I.... K....

Judge.

**119. Judgment on the foregoing finding.**[*Title of court and of cause.*]

The above entitled matter having been submitted to the determination of the court by the above named parties upon the agreed statement of facts on file, and the said parties having also filed their affidavit by which it appears that the said controversy is real and the proceeding brought in good faith to determine the rights of the parties, and the court having heretofore made and filed its finding and determination herein and ordered judgment upon such finding.

NOW, upon motion of E.... F...., Esq., attorney for said A.... B....,

IT IS ADJUDGED [*here insert the proper judgment as ordered in the finding.*]

Dated this .... day of ....., 19.. By the Court:

I.... K....

Clerk.



## CHAPTER IV.

### LEAVE TO SUE

- |  |   |
|--|---|
| 120. Affidavit for leave to sue on judgment in the same court.                   | 129. Petition for permission to bring action upon the bond of an executor, administrator or testamentary trustee. |
| 121. Notice of motion on foregoing affidavit.                                    | 130. Order granting leave on foregoing petition.  |
| 122. Order granting leave to sue.  | 131. Petition for leave to sue on a sheriff's bond.   |
| 123. Petition for leave to sue on judgment recovered in another state; New York. | 132. Order on above petition granting leave to sue.   |
| 124. Petition for leave to sue a receiver.                                       | 133. Petition by attorney-general or other public prosecutor to bring action to vacate a corporate charter.       |
| 125. Notice of motion on foregoing petition.                                     | 134. Request to attorney-general or prosecuting officer to sue.   |
| 126. Order granting leave to sue a receiver.                                     | 135. Petition by private person to bring action to vacate corporate charter, attorney-general having refused.     |
| 127. Petition of receiver for leave to sue.                                      |   |
| 128. Order granting leave to receiver to sue.                                    |   |

#### 120. Affidavit for leave to sue on judgment in the same court.<sup>1</sup>

[*Title of court and of cause.*]

[*Venue.*]

A. . . . B. . . . , the above named plaintiff, being duly sworn, says that on the . . . . day of . . . . , 19. . . , he recovered judgment in the above entitled action against the above named defendant for the sum of . . . . dollars damages and costs, which said judgment was duly docketed in the office of the clerk of this court on the said . . . . day of . . . . 19. . . [and in the counties of . . . . and . . . . on the . . . . day of . . . . , 19. . . ], and still remains unsatisfied [*or unsatisfied as to part of the same, to-wit, the sum of . . . . dollars*];

<sup>1</sup>N. Y. Code sec. 1913; Wis. Stats. 1913 sec. 2916; Minn. Gen. Stats. 1913 sec. 7979; N. Dak. Code 1905 sec. 6768; S. Dak. Code C. P. 1908 sec. 37; Iowa Code 1897 sec. 3439.

That execution has been duly issued upon said judgment and returned wholly unsatisfied [*or, unsatisfied as to the sum of . . . . . dollars*], and that the defendant neglects and refuses to pay the amount due upon said judgment although of sufficient ability, as deponent is informed and believes, to pay the same.

[*Here state facts showing why it is necessary or proper to sue upon the judgment, as for example*]: That the said C. . . . D. . . . has real property in said county, as deponent is informed and believes, and that the lien of the said judgment thereon will expire by lapse of time on or about the . . . day of . . . . ., 19. ., and that it is necessary to bring an action thereon in order to secure the collection of said judgment.

A. . . . B. . . .

[*Jurat.*]

## 121. Notice of motion on foregoing affidavit.<sup>2</sup>

[*Title of court and cause.*]

To C. . . . D. . . .,

the above named Defendant:

TAKE NOTICE that upon the affidavit of A. . . . B. . . ., a copy of which is herewith served upon you, and upon the judgment roll in this action the plaintiff will move the above named court at a regular term thereof to be held in the court house in the city of . . . . ., in said county, on the . . . day of . . . . ., 19. ., at the opening of court on that day or as soon thereafter as counsel can be heard, for an order granting him leave to bring an action against you on such judgment and for such other relief as may be just.

Dated . . . . ., 19. .

A. . . . B. . . .

<sup>2</sup> Service of this notice should be made on the judgment debtor personally; in New York, however (N. Y. Code sec 191 sub. 3), the court may direct notice to be given in another manner if it appear that personal service on the judgment

debtor cannot be given with due diligence. The facts showing the impossibility of personal service should appear in the affidavit and an order to show cause should be made by the court specifying the manner in which service shall be made.

**122. Order granting leave to sue.**

[Caption of order as in Form 8.]

The motion of the above named plaintiff for leave to commence an action upon the judgment heretofore rendered in this cause having come on to be heard upon the affidavit of A.... B.... and the judgment roll herein, L.... M...., Esq., appearing for the plaintiff and no one appearing in opposition [or O.... P...., Esq., appearing for the defendant in opposition to said motion];

IT IS ORDERED that the said plaintiff have leave to bring an action against the said defendant upon the said judgment.

Dated ....., 19..

By the Court:

I.... K....

Judge.

**123. Petition for leave to sue on judgment recovered in another state (New York).<sup>3</sup>**

To the ..... Court:

THE PETITION of A.... B.... [*plaintiff*] respectfully shows that on the .... day of ....., 19.., judgment was rendered in his favor against one C.... D.... [*defendant*] for the sum of ..... dollars, in an action brought by deponent against said C.... D.... in the ..... court, which said judgment was duly docketed in the office of the clerk of the county of ..... on the .... day of ....., 19.. [*continue as in Form 120 and add*];

That no previous application for leave to sue upon said judgment has been made [*if a previous application has been made state to what court or judge and what order or decision was made and what new facts are now shown*].

WHEREFORE your petitioner asks leave to bring an action upon said judgment in this court against said C.... D....

Dated ....., 19..

A.... B....

[Verification as in Form 12.]

<sup>3</sup> By the New York statute (N. Y. Code sec. 1913) the court in which the action is to be brought must make an order granting leave.

**124. Petition for leave to sue a receiver.<sup>4</sup>**

[Caption as in Form 3.]

To the . . . . . Court for . . . . . County.

THE PETITION of A. . . . B. . . . respectfully shows to the court that on the . . . . day of . . . . ., 19. . . , the said C. . . . D. . . . was, by an order of this court duly made, appointed receiver of the property and effects of E. . . . F. . . . in an action then pending in this court [*here state nature of the action*];

That said receiver has now in his possession, claiming title thereto as such receiver, certain property [*here describe the same with reasonable certainty*]; that your petitioner is in fact the owner of such property, but that his title thereto is denied by the said receiver.

That your petitioner has demanded of said receiver that he deliver up the said property to your petitioner, but that said receiver refuses so to do.

That your petitioner has fully and fairly stated the case to L. . . . M. . . . , Esq., his counsel, who resides at . . . . . , and upon such statement he is advised by his said counsel and verily believes that he has a good and substantial cause of action against the said receiver to recover possession of said property.

WHEREFORE your petitioner prays that leave may be granted to him to bring an action in the . . . . . court for . . . . . county against said receiver to recover the said property [*or state in apt terms the relief desired in the action*] and for such other relief as to the court may seem just.

A. . . . B. . . .

[Verification as in Form 12.]

**125. Notice of motion on foregoing petition.**

[Title as in Form 124.]

To C. . . . D. . . . , Receiver:

TAKE NOTICE that upon the petition of A. . . . B. . . . , a copy of which is herewith served upon you, the said A. . . . B. . . . , will move the court, at a regular term thereof to be

<sup>4</sup>It rests in the discretion of the court to allow a party claiming rights against its receiver to bring an independent action against

him, or to compel such party to proceed against him by petition in the action in which he is receiver. *Bank v. Landauer*, 68 Wis. 44. In *Minne-*

held in the court house in the city of . . . . ., in said county, on the . . . . day of . . . . ., 19.., at the opening of court on that day or as soon thereafter as counsel can be heard, for an order granting him leave to sue as demanded in said petition.

Dated . . . . ., 19..

L. . . . M. . . .  
Attorney for Petitioner.

## 126. Order granting leave to sue a receiver.

[Caption as in Form 8.]

The petition of A. . . . B. . . . having come on to be heard before the court, and L. . . . M. . . ., Esq., appearing for the said petitioner, no one appearing in opposition [or N. . . . O O. . . ., Esq., appearing for the said receiver], and the court being now fully advised in the premises;

IT IS ORDERED that leave be and is hereby given to the said A. . . . B. . . . to sue said receiver, as prayed in said petition.

[Date.]

By the Court:  
I. . . . K. . . .  
Judge.

## 127. Petition of receiver for leave to sue.<sup>5</sup>

[Title of court and action in which receiver was appointed.]

To the . . . . . Court for . . . . . County.

THE PETITION of C. . . . D. . . . respectfully shows that on the . . . . day of . . . . ., 19.., he was appointed receiver of the property and effects of A. . . . B. . . . by an order of this court bearing date on the said day [or, by an order made by L. . . . M. . . . Esq., county judge, or O. . . . P. . . ., Esq., court commissioner.]

[State briefly and concisely the facts necessary to show the court that the receiver has a cause of action against the party whom he desires to sue.]

sota a receiver or assignee may be sued in respect to any act or transaction of his in carrying on the business of his trust without previous leave of court. Minn. Gen. Stats. 1913 sec. 7687. In Texas the necessity of obtaining leave of court is

expressly dispensed with. Tex. Civ. Stats. Ann. 1913 art. 2146.

<sup>5</sup> In the absence of statute or court rules receivers are not entitled to sue without obtaining leave of court. Pomeroy's Eq. Jur. sec. 1336.



That your petitioner has sufficient property in his hands as receiver to indemnify the said [*name party to be sued*] for any costs he may recover against your petitioner in such action. That no previous application for leave to bring this action has been made.

WHEREFORE your petitioner prays that he be granted leave by this court to bring an action against said [*name party to be sued*] to recover said debt [*or otherwise state the relief desired.*]

[*Date.*]

C.... D....

Receiver.

[*Venue.*]

C.... D.... being first duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge.

C.... D....

### 128. Order granting leave to receiver to sue.

[*Caption as in Form 8.*]

On reading and filing the verified petition of the receiver in the above entitled action, praying leave to bring an action as such receiver against E.... F...., no one appearing to oppose said motion, it appearing to the court now here that reasonable grounds exist for such action; upon motion of said receiver [*or, L.... M.... Esq., counsel for said receiver*];

IT IS ORDERED that the said C.... D.... as such receiver, be and is hereby authorized to commence and prosecute an action in the proper court [*or give name of the specific court*] against the said E.... F.... [*here state any conditions which may be imposed by the court.*]

[*Date.*]

By the Court:

J.... K....

Judge.

### 129. Petition for permission to bring action upon the bond of an executor, administrator, or testamentary trustee.\*

[*Caption as in Form 3.*]

To the Hon. I.... K...., Judge of said Court.

THE PETITION of A.... B...., of ....., respectfully shows to the court that he is a creditor [*or legatee, or next of*



kin of X.... Y...., deceased, whose estate is now in course of administration in said court; that O.... P...., the executor [or administrator] of said estate was by an order made by this court on the .... day of ...., 19.., ordered and directed to pay the debts and legacies of said deceased [or the distributive shares of said estate which the next of kin of said deceased are entitled by law to receive], and among said debts [or legacies, or distributive shares] the said executor [or administrator] was ordered and adjudged to pay to your petitioner the sum of ..... dollars.

That on the .... day of ....., 19.., your petitioner demanded of said executor [or administrator] payment of his said claim [or legacy, or distributive share of such estate] but said executor [or administrator] has refused and still refuses to pay the same or any part thereof, although he has moneys and effects of said estate in his hands sufficient to pay the same.

[If it is claimed that petitioner has been injured by an act of maladministration, the facts showing the same should be set forth.]

WHEREFORE your petitioner prays that he be permitted to bring an action upon the bond of the said executor or administrator against him and his sureties thereon.

A.... B....

Petitioner.

[Verification as in Form 12.]

[Attach the following certificate of attorney if thought advisable]:

I, L.... M...., attorney for said petitioner, do hereby certify that I have examined the facts set forth in the foregoing petition and that in my opinion the petitioner has a valid and meritorious cause of action thereon.

L.... M....

Attorney.

### 130. Order granting leave on foregoing petition.

[Caption as in Form 8.]

Upon reading and filing the petition of A.... B.... pray-

\* In Wisconsin and North Dakota leave of court must be obtained before bringing suit on an executor's bond. Wis. Stats. 1913 sec. 4015-4016; N. Dak. Rev. Codes 1905 sec. 8167.

In Nebraska, before action can be brought for maladministration on a probate bond, leave of court must be obtained. Neb. R. S. 1913 sec. 1520.

ing for permission to bring action in his own behalf upon the bond of O.... P...., executor of the last will and testament [or administrator of the estate] of X.... Y...., deceased; it appearing from said petition that good ground exists for the commencement of such action;

IT IS ORDERED that permission be and is hereby given to bring an action on said bond against the said executor [or administrator] and the sureties upon such bond, in the name of the said petitioner as plaintiff, according to the prayer of said petition.

[Date.]

By the Court:

I.... K....

Judge.

### 131. Petition for leave to sue on a sheriff's bond.<sup>7</sup>

[Caption as in Form 3.]

To the Supreme Court of the State of New York.

THE PETITION of A.... B...., of ....., respectfully shows to the court that at the times hereinafter named one C.... D.... was and still is the sheriff of the county of ..... in this state, and prior to his entering upon the duties of his office he, the said sheriff, together with L.... M...., and N.... O...., his sureties, duly executed a joint and several bond to the people of this state [or name the body politic named as obligee in the bond] which bond was conditioned [here state the condition of the bond] and a certified copy of which bond is annexed to this petition.

[Here allege the sheriff's default or breach of his bond in concise terms, as for instance]:

That on the .... day of ....., 19.., the said C.... D.... as such sheriff received a writ of attachment theretofore duly issued in an action between X.... Y.... against one Z.... D.... to be executed against the property of said Z.... D.... and that the said sheriff by virtue of said writ of attachment seized certain property of your petitioner's; that your petitioner claimed the return of the same from said sheriff, who thereupon summoned a jury to try such claim, and the jury upon an inquisition duly found that the same belonged to your petitioner; whereupon said attaching creditor duly indemnified the said sheriff for the detention of

<sup>7</sup> N. Y. Code sec. 1881; Minn. Gen. Stats. 1913 sec. 8244.

said property, whereby the said sheriff was required to and did detain the said property, to your petitioner's damage . . . . . dollars, and that your petitioner has received no satisfaction of any kind for said injury.

*[Or in case the breach of bond complained of consists of a neglect to pay over moneys]:*

That on the . . . . day of . . . . ., 19.., an execution was duly issued on behalf of your petitioner against the property [or the person] of one Z.... D.... upon a judgment for . . . . . dollars theretofore duly recovered and docketed in favor of your petitioner against said Z.... D.... in the . . . . . court, which execution was on the . . . . day of . . . . ., 19.., delivered to and received by the said sheriff to be executed.

That as your petitioner is informed and believes, said sheriff collected and received upon said execution to the use of your petitioner, the sum of . . . . . dollars, besides his fees and poundage, and that although more than sixty days have elapsed since the delivery of said execution and your petitioner did on the . . . . day of . . . . ., 19.., demand of said sheriff that he pay over the said moneys, he the said sheriff has heretofore wholly failed to do so.

*[If a judgment has been obtained against the sheriff allege it as follows]:*

That your petitioner heretofore sued said sheriff for the said seizure of petitioner's property [or for the said neglect to pay over said money] and prior to the commencement of this action obtained judgment against the said sheriff for the sum of . . . . . dollars, upon which judgment an execution has been issued and returned wholly unsatisfied, and that the said sheriff is, as your petitioner is informed and believes, wholly insolvent and unable to pay the said damages.

That no previous application for leave to sue on said bond has been made to the knowledge of your petitioner [except, *if any previous application has been made state the result*].

WHEREFORE your petitioner asks leave to prosecute said bond of said sheriff in this court, and for such other order as may be just.

[Date.]

A.... B....

[Verification as in Form 12.]

**132. Order on above petition granting leave to sue.**

[Caption as in Form 8.]

On reading and filing the verified petition of A.... B...., together with a certified copy of the official bond of C.... D.... as sheriff, and upon proof of due service of notice of this motion upon E.... F...., and after hearing O.... P...., of counsel for A.... B...., in support of said motion, no one appearing in opposition [or, Q.... R.... appearing in opposition to said motion]; now upon motion of said O.... P....,

IT IS ORDERED that said A.... B.... be permitted to bring and maintain an action on the official bond of said C.... D.... as sheriff, against the said C.... D...., and X.... Y.... and Z.... D...., sureties upon said bond, in this court, and that said action may be brought in the name of the said A.... B.... as plaintiff.

[Or where the action is to be brought in the name of the people]:

IT IS ORDERED that A.... B.... be authorized to bring an action against the said C.... D.... and X.... Y.... and Z.... D...., his sureties, in this court, in the name of the people of this state, stating in the process, pleadings and proceedings in such action that the same is brought on the relation of said A.... B....

By the Court:

I.... K....

Judge.

**133. Petition by attorney-general or other public prosecutor to bring action to vacate a corporate charter.<sup>8</sup>**

[Caption as in Form 3.]

To the ..... court of the State of .....

The attorney-general of the state of ..... [or the prosecuting attorney of the county of ....., in the state of ....., or otherwise give the title of the officer who under the

<sup>8</sup>N. Y. Code sec. 1798 *et seq*; Wis. Stats. 1913 sec. 3241; N. Dak. Rev. Codes 1905 sec. 7385; S. Dak. C. C. P. 1908 sec. 571. In the following states it seems that no leave of

court is required to commence action—Arizona R. S. 1913 sec. 2107; Arkan; sas Dig. of Stats. 1904 sec. 7982; Iowa Ann. Code 1897 sec. 4313 and 4315, and Supp. 1907 sec. 1641-e;

*law of the particular state is authorized to commence the proceeding*], respectfully shows that the C.... D.... Company is a corporation which was created under and by virtue of the provisions of chapter .... of the laws of the state of ..... [*here name the act of incorporation*] [*or was organized under and pursuant to the terms of chapter .... of the laws of the state of ....., naming the general act under which the corporation was organized, if any*] for the purpose of [*here state the purposes of the incorporation*].

That the said corporation, as your petitioner is informed and believes, has not organized and commenced the transaction of its business although more than one year has elapsed since the time it became a corporation; on the contrary [*here state the facts specifically which substantiate the allegation, or, instead of this allegation set forth specifically any violation of law on the part of the corporation by which under the particular statute its corporate franchises have been forfeited*].

That by reason of the said facts and circumstances hereinbefore set forth said corporation has forfeited its corporate rights and franchises.

WHEREFORE your petitioner asks leave to bring an action in the name of [the people of] the state for the purpose of vacating the charter of said corporation and annulling its existence.

Dated this .... day of ....., 19..      A.... B....

Attorney-General.

[*Verification as in Form 12.*]

Kansas Gen. Stats. 1909 sec. 5145, 5164, 6277; Minnesota Gen. Stats. 1913 sec. 8253, 8254; Missouri R. S. 1909 sec. 2631; State ex. rel. v. Stewart, 32 Mo. 379; State ex inf. v. Ry. 176 Mo. 687; 75 S. W. 776; Nebraska R. S. 1913 sec. 8328, 8329; State v. Stein, 13 Neb. 529; 14 N. W. 481; Oklahoma Comp. Laws 1909 sec. 6189, 6190; Texas Civ. Stats. Ann. 1913 Art. 2131; 4427; 7801; Washington Rem. and Bal. Code 1910 sec. 1034, 1035. In Montana, Utah and Wyoming it seems that the attorney-general may bring the action on his own relation and when directed by the governor is required to commence the action, but

if the action be based upon the relation of another person, leave of court must be obtained. Mont. Rev. Codes 1907 sec. 6946; Utah Comp. Laws 1907 sec. 3612; Wyo. Comp. Stats. 1910 sec. 5076. In Oregon it seems that the action is to be brought by the prosecuting attorney of the district on his own relation or on the relation of a private party, but that in either case leave must be obtained. Oregon Laws 1910 sec. 365-368. In California the action may be brought by the attorney-general on his own information or upon the complaint of a private party, and there seems to be no provision requiring that leave of court be obtained. Cal. C. C. P



**134. Request to attorney-general or prosecuting officer to sue.<sup>9</sup>**

To the Attorney-General of  
the State of.....

*[Or name the prosecuting officer as specified in the laws of the particular state.]*

You are hereby requested to bring an action against the C.... D.... Company of ..... and its alleged directors, for the purpose of dissolving the said corporation and forfeiting its corporate rights, privileges and franchises [or for the purpose of vacating the charter of said corporation and annulling its existence] upon the following grounds: That the said corporation [*here state concisely the violations of law which have taken place and upon which it is claimed the charter of the corporation should be vacated or dissolved.*]

Your petitioner hereby offers to furnish sufficient security to the satisfaction of the attorney-general [or to the satisfaction of the court] to indemnify the [people of] the state of ..... against costs in any action or proceeding brought upon this application.

[Date.]

A.... B....

*[The facts which authorize the dissolution of the corporation should be set forth in affidavits attached to the request.]*

*[Notice of presentation of this request should be given to the proposed defendant.]*

**135. Petition by private person to bring action to vacate corporate charter, attorney-general having refused.<sup>10</sup>**

*[Caption as in Form 3.]*

To the ..... Court of the state of .....

A.... B.... of ..... county of ..... in said state by

sec. 803, and C. C. sec. 399-400. In Idaho an inquiry into the due incorporation of any company claiming to be a corporation may be had at the suit of the people of the state, on the information of the prosecuting attorney of the county of the principal place of business of the corporation. Idaho Rev. Codes 1908 sec. 2772.

this application can only be made by a creditor or stockholder of the corporation, and generally in the other states it may be said that either by statute or upon general local principles the application should show that a private person who desires to sue should have some interest in the subject matter of the action and such interest should be set forth in this application.

<sup>9</sup> See preceding note. In New York



this his petition respectfully shows:

I. That the C.... D.... company is a corporation [*allege the corporate character and purposes of the corporation as in Form 133*].

II. That your petitioner is a stockholder, owning .... shares of stock of the par value of ..... dollars in said corporation [*or is a judgment creditor of said corporation, having obtained judgment against the same for .... state amount and date of the judgment and the court in which rendered; or otherwise state the interest of the petitioner in the corporation according to the fact*].

III. That [*here state the violation of law or other facts justifying a judgment of forfeiture as in Form 133*].

IV. That upon application duly made to the Hon. E.... F...., attorney-general of said state, the said attorney-general on the .... day of ..... refused to bring action to forfeit the charter of said corporation or annul its franchises [a copy of which refusal is annexed hereto, marked "Exhibit A"].

V. That your petitioner stands ready and hereby offers to give such satisfactory security as the court may require to indemnify the state and the said corporation from all costs and expenses which may be incurred in said action.

WHEREFORE [*prayer as in Form 133*].

[*Date.*] •

A.... B....

<sup>10</sup> Wis. Stats. 1913 sec. 3242; Iowa Ann. Code 1897 sec. 4316; N. Dak. Rev. Codes 1905 sec. 7385.

## CHAPTER V.

### APPOINTMENT OF GUARDIANS AD LITEM

- |  |  |
|--|--|
| 136. Petition of infant plaintiff over fourteen.   | 145. Petition by relative or friend of infant defendant.   |
| 137. Consent of proposed guardian and affidavit as to responsibility.  | 146. Order appointing guardian of infant defendant.  |
| 138. Petition of general guardian relative or friend for appointment of guardian <i>ad litem</i> for an infant plaintiff under fourteen. | 147. Petition by relative or friend for appointment of guardian for insane defendant.  |
| 139. Notice of foregoing application, to be given to the general guardian or to the person with whom such infant resides.                | 148. Petition by party to procure appointment of guardian <i>ad litem</i> for infant defendant under the age of fourteen, or who has neglected to apply. |
| 140. Order appointing guardian <i>ad litem</i> for infant plaintiff.   | 149. Affidavit and application in case of non-resident infant defendant; Wisconsin.  |
| 141. Bond of guardian <i>ad litem</i> for infant plaintiff.  | 150. Order on same.  |
| 142. Bond of guardian <i>ad litem</i> in partition.  | 151. Notice of application referred to in last preceding order.  |
| 143. Petition for appointment of guardian <i>ad litem</i> for insane plaintiff.  | 152. Application in case of non-resident infant defendant; Minnesota.  |
| 144. Petition by infant defendant over fourteen years of age.  | 153. Application in case of non-resident infant defendant; North and South Dakota.   |
|  | 154. Order on same.  |

An infant can not sue in his own name or come into court without a guardian. In many states the general guardian may prosecute or defend actions on behalf of his ward, but all courts of general jurisdiction have the authority to appoint a guardian for the purposes of the action, even if the infant have a general guardian, and this power is very generally exercised and will always be exercised where there is any reason to believe that the interests of the infant may not be protected by the general guardian. A guardian so appointed is called a guardian *ad litem*, or next friend.

Under the statutes of the code states generally an infant plaintiff if over the age of fourteen may himself apply to the

court for the appointment of a next friend or guardian *ad litem* to prosecute the action in his behalf. If he be under the age of fourteen the application must be made by his general guardian, or in the absence of such guardian, by a relative or friend. In case the infant has a general guardian, notice of such application must generally be given to such guardian.

In case of an infant plaintiff the application and appointment must be made before the action is commenced, and in case of an infant defendant the application must be made after service of the summons or other process and before answering.

As a general rule guardians *ad litem* must also be appointed to represent the interests of idiots, insane persons, and others under disability.<sup>1</sup>

### 136. Petition of infant plaintiff over fourteen.<sup>2</sup>

To the ..... Court of..... County.

[Or To the Hon. I.... K....

Judge, or Court Commissioner.]

THE PETITION of A.... B.... respectfully shows:

I. That he is an infant of the age of fourteen years and

<sup>1</sup> Wis. Stats. 1913 sec. 2613-2614; Ariz. R. S. 1913 sec. 412-415; Arkansas Dig. of Stats. 1904 sec. 6021-6025; California C. C. P. 1906 sec. 372; Colo. Code Ann. 1911 sec. 7-8; Idaho Rev. Codes 1908 sec. 4095; Iowa Ann. Code 1897 3480-3485; Kansas Gen. Stats. 1909 sec. 5623-5626; Minn. Gen. Stats. 1913 sec. 7678-7679; Montana Rev. Codes 1907 sec. 6481-6482; Mo. R. S. 1909 secs. 1739-1750; Neb. R. S. 1913 sec. 7588-7591; North Dakota Rev. Codes 1905 sec. 6811-6812; S. Dak. C. C. P. 1908 sec. 84-85; Okla. Comp. Laws 1909 sec. 5563-5566; Oregon Laws 1910 sec. 32-33; Tex. Civ. Stats. Ann. 1913 art. 1836, 1942, 4043-4090; Utah Comp. Laws 1907 sec. 2907-2908; Wash. Rem. and Bal. Code, 1910 sec. 187-188; Wyo. Comp. Stats. 1910 sec. 4316-4322. In Texas if the minor or insane person has no legal guardian suits may be insti-

tuted by any person as next friend. Tex. Civ. Stats. Ann. 1913 art. 2167-2171.

<sup>2</sup> Wis. Stats. 1913 sec. 2613-2614; C. C. Rule IX; Ariz. R. S. 1913 sec. 412; Cal. C. C. P. 1906 sec. 373; Colo. Code Ann. 1911 sec. 8; Idaho Rev. Codes 1908 sec. 4096; Iowa Ann. Code 1897 sec. 3484; Kans. Gen. Stats. 1909 sec. 5626; Mont. Rev. Codes 1907 sec. 6482; Minn. Gen. Stats. 1913 sec. 7679; Mo. R. S. 1909 sec. 1741; Neb. R. S. 1913 sec. 7588; N. Dak. Rev. Codes 1905 sec. 6811-6812; S. Dak. C. C. P. 1908 sec. 85; Okla. Comp. Laws 1909 sec. 5563; Oregon Laws 1910 sec. 33; Tex. Civ. Stats. Ann. 1913 art. 1942; Utah Comp. Laws 1907 sec. 2908; Wash. Rem. and Bal. Code 1910 sec. 187; Wyo. Comp. Stats. 1910 sec. 4316. In Arkansas any person may bring the action of an infant as his next friend, but the court may dis-

upward, and resides with his mother at ..... and that he has no general or testamentary guardian [*or if he has a general or testamentary guardian, that L.... M.... is his general or testamentary guardian, who resides at .....*]

II. That your petitioner has a cause of action against C.... D..., of ....., for the partition of certain real estate in said county of ....., described as follows: [*insert description*] said real estate being owned by your petitioner and said C.... D.... as tenants in common [*or state briefly the facts constituting the cause of action upon which it is desired to bring the suit*], and that your petitioner is desirous of bringing an action in the ..... court against said C.... D.... for the partition of said land.

III. That E.... F..., the uncle of your petitioner, who resides at ..... is a competent and responsible person to become the guardian of your petitioner in such action, and that no previous application for the appointment of a guardian *ad litem* in this matter has been made [*or if a previous application has been made, state the facts showing why second application has become necessary*].

IV. [*If it is desirous to have some person other than the general guardian appointed as guardian ad litem*]: That the said L.... M...., the general guardian of your petitioner, declines to be appointed guardian *ad litem* for the purpose of bringing this action, wherefore it is necessary that some other person be appointed for that purpose [*or state other cause why the guardian should not be appointed*].

WHEREFORE your petitioner prays that E.... F.... or some other competent person may be appointed guardian *ad litem* of your petitioner, to prosecute such action in his behalf.

Dated ....., 19..  
[Venue.]

A.... B....

A.... B.... being first duly sworn says that he has read the foregoing petition by him and knows the contents thereof, and that the same is true of his own knowledge.

A.... B....

[*Jurat.*]

miss it if it is not for the benefit of the infant, or substitute the guardian of the infant or another person as

the next friend. Ark. Dig. of Stats. 1904 sec. 6021.

**137. Consent of proposed guardian and affidavit as to responsibility.**

[*Venue.*]

E.... F.... being first duly sworn says that he resides at ....., in said county of ....., and is the general guardian of the infant named in the foregoing petition [*or if said infant has no general guardian that such infant has no general guardian*] and affiant believes that he is fully competent to properly understand and protect the rights of the said infant as guardian *ad litem* in the manner stated in the foregoing petition; that he is in no wise adversely interested to the interests of said minor in said matter, and is not connected in business with the adverse party nor with his counsel, and that he is financially responsible to answer for any liability he may incur as such guardian *ad litem*; and he hereby consents to act as such guardian.

E.... F....

[*Jurat.*]

**138. Petition of general guardian, relative or friend for appointment of guardian ad litem for an infant plaintiff under fourteen.**

[In the ..... Court of ..... County.

[*Or to the Hon. I.... K....*

Judge, *or* Court Commissioner.]

THE PETITION of A.... B.... respectfully shows:

I. That your petitioner is a testamentary guardian of one C.... D...., an infant under fourteen years of age, duly appointed by the will of E.... F...., father of said infant [*or, is the general guardian of C.... D...., an infant of the age of fourteen years and upward, duly appointed on the .... day of ....., 19.., by the order of the ..... court in the county of ....., or, is a relative, to-wit, the father, or, a friend of C.... D.... an infant under the age of fourteen years*].

II. That the said C.... D.... was of the age of .... years on the .... day of ..... last and resides at ..... [with the petitioner].

III. [*Set forth briefly the cause of action existing in favor of the infant, substantially as in Form 136.*]



IV. [*If the petitioner seeks the appointment of himself*]: That your petitioner is willing to become the guardian *ad litem* of the said C.... D.... for the purpose of prosecuting said action and [*add allegation of competence and responsibility as in Form 137.*]

[*Or, if appointment of a third person is desired*]: That E.... F...., who resides at ....., in said county, is fully competent to understand and protect the rights of the said minor [*add further allegations of competence as in Form 137.*]

WHEREFORE your petitioner prays that he may be appointed [*or, that said E.... F.... may be appointed*] guardian *ad litem* of said minor to prosecute said action for him.

A.... B....

[*Verification.*]

[*If the proposed guardian is other than the petitioner, add his consent as in Form 137.*]

**139. Notice of foregoing application, to be given to the general guardian or to the person with whom such infant resides.<sup>3</sup>**

[*Caption as in Form 3.*]

To L.... M.... [*insert name of general or testamentary guardian or person with whom the infant resides*].

TAKE NOTICE that upon the annexed petition [consent and affidavit] application will be made by the undersigned to the ..... court of ..... county [*or, the Hon. I.... K...., Judge, or other officer to whom application is to be made*], on the ... day of ....., 19.., at .... o'clock in the forenoon, at the court house in the city of ....., in said county [*or name other place where the application is to be made*], for an order appointing E.... F.... guardian *ad litem* of the infant above named, and authorize him to prosecute the action referred to in said petition.

Dated ....., 19..

A.... B....

<sup>3</sup> Wis. Stats. 1913 sec. 2614; Rev. Codes 1905 sec. 6812; S. Dak. Ariz. R. S. 1913 sec. 1106; Minn. C. C. P. 1908 sec. 85. Gen. Stats. 1913 sec. 7679; N. Dak.



### 140. Order appointing guardian ad litem for infant plaintiff.

[Caption as in Form 3.]

Upon reading and filing the petition of A.... B.... duly verified, together with the written consent and affidavit of C.... D.... attached thereto [*if notice has been given to the general guardian or person with whom the infant resides; due notice having been given to the general guardian or, to X.... Y...., with whom said infant resides, of this application; proof of the due service of such notice having been presented and filed*] from all of which it satisfactorily appears that it is necessary that an action be brought on behalf of said infant in relation to the matters set forth in said petition, and that the said E.... F.... is a competent and responsible person to bring such action and represent said infant;

IT IS NOW ORDERED that the said E.... F.... be and he is hereby appointed guardian *ad litem* of said infant and authorized to bring and prosecute the action named in said petition in said infant's behalf upon his filing a bond according to law in the penal sum of ..... dollars, with sufficient surety, to be approved by me, conditioned that he will faithfully account for and apply, under the direction of the court, any money or property of said ward which he may receive as such guardian and faithfully in all things discharge his trust as such guardian.

Dated ....., 19..

G.... H...  
Judge.

### 141. Bond of guardian ad litem for infant plaintiff.<sup>4</sup>

KNOW ALL MEN by these presents that we, A.... B.... as principal, and C.... D.... and E.... F.... as sureties, all of ....., in the county of ....., state of ....., are held and firmly bound unto [*insert name of infant*], of ....., in the penal sum of ..... dollars, to be paid to the said [*name of infant*] his executors, administrators or assigns,

<sup>4</sup> Wis. Stats. 1913 sec. 2617; Ariz. 7589 and Wyo. Comp. Stats. 1910 sec. 4317 (if insolvent court may require security for costs of action); N. Dak. 1911 sec. 7150 (cost bond); Minn. Gen. Stats. 1913 sec. 7678; Mo. R. S. 1909 sec. 1743; Neb. R. S. 1913 sec. C. C. P. 1908 sec. 86.

for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed and dated the .... day of ....., 19..

Whereas the above bounden A.... B.... was, on the .... day of ....., 19.., duly appointed to appear as guardian *ad litem* for [*insert name of infant*] to prosecute an action on his behalf in the ..... court of ..... county against Q.... R...., which action is about to be begun [*or, is now pending*].

And whereas the said principal is, by virtue of such appointment, to receive moneys [*or, property*] of his said ward of the value of ..... dollars.

NOW THEREFORE, the condition of this obligation is such that if the said A.... B.... shall faithfully discharge the trust committed to him in respect to said money or property, and account for and apply the same under the direction of the court, then this obligation to be void, otherwise of force.

Signed, sealed and delivered  
in presence of:

A.... B.... [Seal]

C.... D.... [Seal]

E.... F.... [Seal]

G.... H....

I.... K....

[*Venue.*]

C.... D.... and E.... F.... being first duly sworn, each for himself says that he is a surety upon the foregoing bond, and that he is a resident and freeholder in said state and is worth the sum of ..... dollars over and above his indebtedness and liabilities in property within this state not exempt from execution.

C.... D....

E.... F....

[*Jurat.*]

[*Approval to be endorsed on bond*]: I approve of the within bond as to the form and manner of execution and as to the sufficiency of sureties.

Dated ....., 19..

[*Signature of officer.*]

**142. Bond of guardian ad litem in partition.<sup>5</sup>**

KNOW ALL MEN by these presents, that we, A.... B...., of ....., as principal, and C.... D.... and E.... F...., of ....., as sureties, are held and firmly bound unto the State of Wisconsin in the penal sum of ..... dollars, for which sum well and truly to be paid we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed and delivered the .... day of ....., 19...

WHEREAS the above bounden principal is the general guardian duly appointed of one G.... H...., a minor [*or*, insane person] of ....., and whereas the said G.... H.... is a party plaintiff [*or*, defendant] in a certain action for partition pending in the ..... court of ..... county, and the said principal has been authorized by the said court to represent the interest of the said G.... H.... in said action [*or*, Whereas the above bounden principal has been duly appointed by the ..... court of ..... county as the guardian *ad litem* of one G.... H.... in a certain partition action now pending in the said court, the said G.... H.... having no general guardian], and the said guardian having been required by the said court to give security for his acts as provided by law;

NOW THEREFORE the condition of this obligation is such that if the said A.... B.... shall faithfully perform his duties as such guardian and render a just and true account of his guardianship in all courts and places when there-to required, and observe all orders of the court in relation to his trust, then this obligation to be void, otherwise to remain in full force.

Sealed and delivered  
in presence of:

A.... B.... [Seal]  
C.... D.... [Seal]  
E.... F.... [Seal]

I.... K....  
X.... Y....

[*Add acknowledgment and justification of sureties and approval as in Form 141.*]

<sup>5</sup> Wis. Stats. 1913 sec. 3104; Mo. R. S. 1909 sec. 2568; Oregon Laws 1910 sec. 480.

### 143. Petition for appointment of guardian ad litem for insane plaintiff.<sup>6</sup>

To the ..... Court of ..... County.

[Or, to the Hon. I.... K....,

Judge, or, Court Commissioner.]

THE PETITION of A.... B.... respectfully shows:

I. That he is the father [or, brother, or, general guardian] of C.... D...., who is a resident of ....., county of ....., state of ....., and is now insane and has no general guardian. [*If there has been an adjudication of insanity and a general guardian appointed*], that said C.... D.... was by order of the ..... court of ..... county, duly made on the .... day of ....., 19.., adjudged to be insane and incompetent to have charge and management of his property, and that your petitioner was thereupon duly appointed his general guardian.

II. That the said C.... D.... owns an undivided one-fourth interest in certain land situated in said county and that it is necessary that an action be brought in his behalf in the said ..... court for the purpose of obtaining partition of said land [*or state briefly the cause of action necessary to be brought on behalf of the ward*].

III. That E.... F...., of ....., is a competent and responsible person and a relative, to-wit, an uncle of said C.... D...., and is in no wise adversely interested or connected in business with the adverse parties or their counsel, and that no previous application has been made for the appointment of a guardian *ad litem* in this matter [*or if a previous application has been made, state the facts showing why second application has become necessary*].

WHEREFORE your petitioner, on behalf of the said C.... D.... prays that the said E.... F.... or some other suitable person be appointed such guardian to prosecute such action in behalf of the said C.... D....

Dated ....., 19..

A.... B....

[*Verification and consent of guardian ad litem and order appointing as in previous forms in this chapter.*]

<sup>6</sup> Wis. Stats. 1913, sec. 2616; C. Neb. R. S. 1913 sec. 1650; N. Dak. C. Rule IX; Cal. C. C. P. 1906 sec. Rev. Codes 1905 sec. 8254; S. Dak. 372; Idaho Rev. Codes 1908 sec. Prob. C. 1908 sec. 384; Utah Comp. 4096; Iowa Ann. Code 897 sec. 3481; Laws 1907 sec. 2908; Wash. Rem. Mont. Rev. Codes 1907 sec. 6482; and Bal. Code, 1910 sec. 188; Wyo. Minn. Gen. Stats. 1913 sec. 7679; Comp. Stats. 1910 sec. 4316.

### 144. Petition by infant defendant over fourteen years of age.<sup>7</sup>

[Title of cause.]

To the . . . . . Court of . . . . . County.

[Or, to the Hon. I. . . . K. . . . ,  
Judge, or, Court Commissioner.]

THE PETITION of A. . . . B. . . . , one of the defendants above named, respectfully shows:

I. That an action has been commenced in this court against your petitioner by one C. . . . D. . . . , the object of which action is to [*here briefly describe or state the object of the action*].

II. That your petitioner is an infant of more than fourteen years, to-wit, of the age of . . . . years on the . . . . day of . . . . ., 19. . . , and that he resides with his father at . . . . . , and that G. . . . H. . . . is his general guardian [*or, that petitioner has no general guardian*].

III. That twenty days have not elapsed since the service of the summons in this action upon your petitioner [*or, that no application for appointment of a guardian *ad litem* to appear on behalf of your petitioner in said action has been made to the best of your petitioner's knowledge and belief*].<sup>8</sup>

WHEREFORE your petitioner prays that E. . . . F. . . . may be appointed his guardian *ad litem* to appear and defend said action on his behalf.<sup>9</sup>

Dated . . . . ., 19. . .

A. . . . B. . . .

[*Verification, consent of proposed guardian, and proof of competency, as in preceding forms of this chapter.*]

<sup>7</sup> Wis. Stats. 1913 sec. 2614 subd. 2; Ariz. R. S. 1913 sec. 415; Ark. Dig. of Stats. 1901 sec. 6025; Cal. C. C. P. 1906 sec. 373; Colo. Code. Ann. 1911 sec. 8; Idaho Rev. Codes 1908 sec. 4096; Iowa Ann. Code 1897 sec. 3484; Kans. Gen. Stats. 1909 sec. 5626; Mont. Rev. Codes 1907 sec. 6482; Minn. Gen. Stats. 1913 sec. 7679; Mo. R. S. 1909 sec. 1748; Neb. R. S. 1913 sec. 7591; N. Dak. Rev. Codes 1905 sec. 6812; S. Dak. C. C. P. 1903 sec. 85; Okla. Comp. Laws 1909 sec. 5566; Oregon Laws

1910 sec. 33; Tex. Civ. Stats. Ann. 1913 sec. 1942; Utah Comp. Laws 1907 sec. 2908; Wash. Rem. and Bal. Code 1910 sec. 187; Wyo. Comp. Stats. 1910 sec. 4322.

<sup>8</sup> It seems that after the expiration of twenty days the infant may still apply unless an application has been previously made by the adverse party. *McConnell v. Adams*, 3 Sandf. 728.

<sup>9</sup> In Wisconsin no person except an attorney or officer of the court can be appointed *ad litem* of an infant defendant. C. C. Rule IX.



**145. Petition by relative or friend of infant defendant.<sup>10</sup>**[*Title of cause.*]

To the . . . . . Court of . . . . . County.

[Or, To the Hon. I. . . . K. . . . ,

Judge, or Court Commissioner.]

THE PETITION of A. . . . B. . . . respectfully shows:

I. That an action has been commenced in this court by the service of summons upon C. . . . D. . . . , one of the defendants above named, and that the object of said action is [*here state the object of action*].

II. That the defendant C. . . . D. . . . is an infant of the age of . . . . years on the . . . . day of . . . . , 19. . . . [*and if he is over fourteen years of age add: and has neglected to apply for the appointment of a guardian ad litem to represent him in this action*]; that the said minor resides with your petitioner, who is his father [*or other relative*] and that he has no general or testamentary guardian within this state [*or if the minor have a guardian, state his name and residence*].

WHEREFORE your petitioner prays that a guardian *ad litem* be appointed to appear and defend said action on behalf of the said infant.

Dated . . . . . , 19. . . .

A. . . . B. . . .

[*Verification, consent of proposed guardian, and proof of competency as in preceding form.*]**146. Order appointing guardian of infant defendant.<sup>11</sup>**[*Title of court and of cause.*]

Upon reading and filing the annexed petition praying the appointment of a guardian *ad litem* for C. . . . D. . . . , an infant and one of the defendants in the above entitled action, and it appearing to the court that E. . . . F. . . . is a competent and responsible person and an attorney of this court, and that he has consented to act as such guardian;

IT IS ORDERED that the said E. . . . F. . . . be and he hereby is appointed guardian *ad litem* for the said C. . . . D. . . . and is authorized and directed to appear and defend

<sup>10</sup> See preceding note. Notice of this application must first be given to the general or testamentary guardian of the infant, if he have one; and if not, then to the infant himself if over

fourteen years of age, or if under that age to the person with whom such infant resides.

<sup>11</sup> Wis. Stats. 1913 sec. 3104.



said action on his behalf. [*In partition actions add:* upon his giving bond to the state, to be filed with the clerk of this court, in the penal sum of . . . . . dollars, with . . . . sureties, to be approved by the judge of this court, conditioned for the faithful performance of his duties as guardian, and that he will render a just and true account of his guardianship in all courts and places when thereunto required and observe all orders of the court in relation to his said trust.]

[Date.]

I. . . . K. . . .

Judge.

### 147. Petition by relative or friend for appointment of guardian for insane defendant.<sup>12</sup>

[*Title of court and of cause.*]

To the . . . . . Court of . . . . . County.

[*Or, To the Hon. I. . . . K. . . .*

Judge, *or, Court Commissioner.*]

THE PETITION of A. . . . B. . . . respectfully shows:

I. That an action has been commenced in this court between the parties above named by the issuance of a summons, and the service thereof, upon some of the defendants.

II. That C. . . . D. . . ., one of the said defendants, is an insane person totally incapable of conducting the defense of said action, And that he is of full age, to-wit, of the age of . . . . years, and has no general guardian, and resides with your petitioner.

III. That your petitioner has no interest adverse to the rights of the said C. . . . D. . . ., and is not connected in business with the attorney or counsel of the adverse party.

WHEREFORE your petitioner prays that he may be appointed the guardian of the said C. . . . D. . . . for the purposes of this action.

Dated . . . . ., 19. . . .

A. . . . B. . . .

[*Verification, consent, and proof of competency as in preceding forms in this chapter.*]

<sup>12</sup> Wis. Stats. 1913 sec. 2615, 2616; Ariz. R. S. 1913 sec. 1138; Ark. Dig. of Stats. 1904 sec. 6026-6030; Cal. C. C. P. 1906 sec. 372-373; Idaho Rev. Codes 1908 sec. 4096 subd. 3; Iowa Ann. Code 1897 sec. 3485; Kans. Gen. Stats. 1909 sec. 5625; Minn. Gen. Stats. 1913 sec. 7679; Montana Rev. Codes 1907 sec. 6481,

6482; Neb. R. S. 1913 sec. 1650; N. Dak. Rev. Codes 1905 sec. 6813; S. Dak. Rev. Prob. Code 1908 sec. 384; Oregon Laws 1910 sec. 1327; Tex. Civ. Stats. Ann. 1913 art. 1836, 1942, 4043-4090; Utah Comp. Laws 1907 sec. 2907-2908; Wash. Rem. and Bal. Code 1910 sec. 187-188; Wyo. Comp. Stats. 1910 sec. 4318.

**148. Petition by party to procure appointment of guardian ad litem for infant defendant under the age of fourteen, or who has neglected to apply.**

[*Title of court and of cause.*]

To the ..... Court of ..... County.

[*Or, To the Hon. I.... K....*

Judge, *or, Court Commissioner.*]

THE PETITION of A.... B..., the plaintiff in this action [*or, one of the defendants in this action*] respectfully shows:

I. That said action has been commenced and is now pending in this court for the purpose of [*here state briefly the object of the action*] and that the summons therein has been served upon the defendant C.... D.... as appears by the summons and proof of service thereof, now on file in this court.

II. That the said defendant C.... D.... is an infant less than fourteen years of age, to-wit, of the age of .... years on the .... day of ....., 19.. [*or, if the infant be over fourteen years of age, more than fourteen years of age, to-wit, of the age of .... years on the .... day of ....., 19.., and that although more than twenty days have elapsed since the service of the summons herein upon him, he has neglected to apply for the appointment of a guardian ad litem in this action*], and that no application for the appointment of such guardian *ad litem* has been made by any relative or friend of said infant [*or if previous application has been made state facts showing why second application has become necessary*].

III. That said infant resides with his mother, E.... F...., at ....., and has not, to the best of the knowledge and information of your petitioner, any general or testamentary guardian within this state [*or, if the infant have a general guardian, state the name and residence of such guardian*].

WHEREFORE your petitioner prays that some suitable and competent person be appointed guardian *ad litem* for said defendant to defend said action in his behalf.

Dated ....., 19..

A.... B....

[*Verification.*]

**149. Affidavit and application in case of non-resident infant defendant (Wisconsin).<sup>13</sup>**

[*Title of court and cause.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff [or, one of the defendants] in the above entitled action; that said action has been commenced and is now pending in this court and is brought for the partition of certain real estate situate in said county of ..... [or otherwise state briefly the purpose of the action]; that the defendant C.... D.... is a necessary or proper party to said action and is an infant over fourteen years of age [or, under fourteen years of age], and that he resides without this state, to-wit, at ..... in the city of ..... [and in case the infant be under fourteen years of age, with one E.... F...., the mother of said infant]; [or, in case the residence of the infant be unknown, that said infant is a resident of this state and his residence is not known to the affiant, nor can the same be ascertained, though diligent inquiry has been made by affiant for that purpose].

That no appearance by or on behalf of said infant and no application for the appointment of a guardian *ad litem* by him or on his behalf has been made to the best of affiant's knowledge and belief; that said C.... D.... has no general or testamentary guardian in this state, and that this affidavit is made for the purpose of basing thereon an application for the appointment of a guardian *ad litem* for said infant.

A.... B....

[*Jurat.*]

**150. Order on same.**

[*Title of court and of cause.*]

On reading and filing the affidavit of A.... B...., the plaintiff [or, one of the defendants] in the above entitled action, from which it satisfactorily appears that the above entitled action has been commenced and is now pending in this court; that C.... D.... is a necessary or proper party thereto; that he is an infant over the age of fourteen years [or, under the age of fourteen years] and has no general or testamentary guardian in this state; that he resides at .....,

<sup>13</sup> Wis. Stats. 1913 sec. 2614 sub. 3.

in the state of ..... [if under the age of fourteen years, with E.... F...., his mother] [or, if the infant's residence be unknown, that the residence of said infant is unknown and cannot with due diligence be ascertained]; and that no guardian has been appointed for him in this action; now, upon motion of G.... H...., attorney for the plaintiff [or, of said defendant];

IT IS ORDERED that said application be made before this court [or, before the undersigned circuit judge, county judge, or, court commissioner] at ..... in the county of ....., on the .... day of ....., 19.., at .... o'clock in the .... noon; that notice of this application be served upon the said infant by mailing a copy of the notice hereto attached and this order to said infant directed to him at his said place of residence with the postage thereon prepaid, and that such mailing be completed at least .... days before the day herein appointed for the hearing of this application [if the infant be under fourteen years of age the direction should be, that a copy be mailed to E.... F.... with whom the infant resides]; [if the residence be unknown substitute, and that notice of this application be made by publication thereof in the X.... Y.... Z...., a newspaper printed and published at the city of ....., in the county of ....., once in each week for four weeks successively prior to the hearing of said application, the said newspaper being designated as most likely to give notice to the said infant].

Dated ....., 19..

I.... K.... Circuit Judge.  
[Or, County Judge, or  
Court Commissioner.]

[Written consent by the proposed guardian ad litem and proof of his competency, as in preceding forms in this chapter, must be filed prior to his appointment.]<sup>14</sup>

### 151. Notice of application referred to in last preceding order.

[Title of court and of cause.]

To the above named infant defendant, C.... D....:

You are hereby notified that pursuant to the terms of an

<sup>14</sup> In Wisconsin by Circuit Court attorney or officer of the court. Rule IX the guardian must be an

order made by I.... K...., circuit judge [or, county judge, or court commissioner] in the above entitled action, on the .... day of ....., 19.., application will be made to the ..... court of ..... county [or, to the Hon. I.... K.... circuit judge, or county judge, or court commissioner] at ....., in the county of ....., on the .... day of ....., 19.., at .... o'clock .... noon, for the appointment of a guardian *ad litem* to appear for you and defend the above entitled action.

Dated ....., 19..

A.... B....  
Plaintiff above named.

**152. Application in case of non-resident infant defendant (Minnesota).**

[*Title of court and of cause.*]

To the District Court of ..... County.

[Or, To the Hon. I.... K.... District Judge.]

THE PETITION of A.... B...., the plaintiff in the above entitled action, respectfully shows:

I. That the above entitled action has been commenced and is now pending in the said court for the purpose of [*here state briefly the purpose of the action*] that the defendant C... D... is a necessary or proper party to said action; that he is an infant who has no general or testamentary guardian within this state, and further, that he is not within this state and is not a resident thereof.

II. That no appearance by or on behalf of said infant has been made in this action, and that no application for the appointment of a guardian *ad litem* by him or on his behalf has been made, to the best of this deponent's knowledge and belief.

III. That on the .... day of ....., 19.., at .... o'clock in the .... noon, at the court house in the city of ....., in said county, this application will be presented to the said court, or to I.... K...., district judge, for the purpose of securing the appointment of a guardian *ad litem* for the said infant defendant.

WHEREFORE your petitioner prays that E.... F.... who is a competent and responsible person, be appointed



guardian *ad litem* of the said infant defendant for the purposes of this action.

Dated . . . . ., 19..

A.... B....

[Add verification.]

[*Before appointment is made the consent of the proposed guardian ad litem, and proof of his fitness and responsibility should be filed. The Minnesota statutes provide that notice of this application is to be given by the publication of a copy thereof once in each week for three successive weeks in a newspaper published in the county in which the action is brought if there be one, and if not, in a newspaper published in an adjoining county. Minn. Gen. Stats. 1913 sec. 7679 subd. 2, and 9412 subd. 14.*]

**153. Application in case of non-resident infant defendant (North and South Dakota ).<sup>15</sup>**

[Title of court and of cause.]

To the District Court

of . . . . . County.

THE PETITION of A.... B.... respectfully shows:

I. That he is the plaintiff in the above entitled action; that said action has been commenced and is now pending in said court for the partition of certian real estate in . . . . . county [*or otherwise state the object of the action*] that the defendant ,C.... D...., is a necessary or proper party to said action and that said defendant is an infant and resides out of this state, to-wit, at . . . . ., in the state of . . . . . [with L.... M...., his mother].

II. That no appearance by or on behalf of said infant, and no application for the appointment of a guardian *ad litem* by him or on his behalf has been made, to the best of petitioner's knowledge and belief.

WHEREFORE your petitioner prays that E.... F...., who is a suitable and proper person, be appointed guardian *ad litem* for the said infant defendant for the purposes of this action.

Dated . . . . ., 19..

A.... B....

[Add verification, consent and proof of fitness of proposed guardian.]

<sup>15</sup> N. Dak. Rev. Codes 1905 sec. 6812 subd. 2; S. Dak. C. C. P. 1908 sec. 85. In both North and South

Dakota a guardian *ad litem* for a non-resident infant defendant may be appointed in actions for the partition



**154. Order on same.**

[*Title of court and of cause.*]

On reading and filing the verified petition of A.... B...., plaintiff in the above entitled action, from which it appears that this action has been commenced and is pending for the partition of real property [*or state briefly the object of the action*] that the defendant, C.... D...., is an infant and resides out of this state and is a necessary or proper party to this action; that he has no guardian *ad litem*, and that E.... F.... is a suitable and proper person to be appointed guardian *ad litem* of said infant for the purposes of the action, and the said E.... F.... having consented to act as such;

IT IS ORDERED that the said E.... F.... be appointed such guardian *ad litem* of the infant defendant C.... D.... for the purposes of this action, unless the said C.... D.... or some person in his behalf, within .... days after the service of a copy of this order, shall procure to be appointed a guardian for the said infant defendant.

And it is further ordered that this order be served upon the said defendant, personally, at his residence in the city of ....., county of ....., state of ....., within .... days from the date hereof, by delivering to and leaving with him a true copy of this order [*or provide by special direction for service by mail upon the said infant or the person with whom he resides*].

Dated ....., 19..

I.... K....  
District Judge.

of real property or the foreclosure of a mortgage or other instrument, and South Dakota in all actions affecting

the title to real property or wherein such infant is a necessary or proper party defendant.

## CHAPTER VI.

### SUMMONS, NOTICE OF OBJECT OF ACTION AND LIS PENDENS.

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|---|--|
| 155. Summons, Wisconsin.<br>156. Notice of object of action in foreclosure.<br>157. The same, in partition.<br>158. Lis pendens in foreclosure.<br>159. The same, in partition.<br>160. The same, in an action to quiet title.<br>161. The same, in an action to foreclose a mechanic's lien.<br>162. The same, in an action to establish a trust.<br>163. The same, in an action for specific performance.<br>164. The same, in ejectment. | 165. The same, in an action in which a warrant of attachment affecting real property has been issued; South Dakota.<br>166. Lis pendens, Kansas.<br>167. Lis pendens, Montana.<br>168. Lis pendens, Washington.<br>169. Lis pendens in application for laying out, widening, vacating, or extending street, alley, water channel, park, highway, or other public place; Wisconsin. |
|---|--|

The form of the summons, or process by which the defendant is brought into court, varies in the different states, and as each state either provides a form by statute or specifically directs what the summons shall contain it is not deemed essential to attempt to gather together the various forms in this work. In some states the summons still continues to be a writ issued out of court and under its seal, while in many states it is simply a notice signed by the plaintiff's attorney, either with or without the complaint or petition. In Iowa it is called an original notice. In the note will be found references to the statutes of the various states which prescribe the form or the contents of the summons.<sup>1</sup> It is

<sup>1</sup>Wis. Stats. 1913 secs. 2630, 2631; Ariz. R. S. 1913 sec. 436, 437; Ark. Dig. of Stats. 1904 sec. 6034; Cal. C. C. P. 1906 sec. 407; Colo. Code Ann. 1911 sec. 36, 37; Idaho Rev. Codes 1908 sec. 4140; Iowa Ann. Code 1897 sec. 3514; Kans. Gen. Stats. 1909 sec. 5653; Minn. Gen. Stats. 1913 sec. 7729; Mont. Rev. Codes 1907 sec. 6515; Mo. R. S. 1909 sec. 1759;

Neb. R. S. 1913 sec. 7626 N. Dak. Rev. Codes 1905 sec. 6834; S. Dak. C. C. P. 1908 sec. 104; Okla. Comp. Laws 1909 sec. 5593; Oregon Laws 1910 sec. 52, 53; Tex. Civ. Stats. Ann. 1913 art. 1852, 2180; Utah Comp. Laws 1907 sec. 2939; Wash. Rem. and Bal. Code 1910 sec. 221, 222, 223; Wyo. Comp. Stats. 1910 sec. 4354.

scarcely necessary to say that the statute should be closely followed. The Wisconsin form of summons is given as a fairly typical code summons. In some of the states it is provided that a brief notice of the object of the action may be served with the summons upon those defendants against whom no personal claim is made, instead of serving a copy of the complaint or petition upon them. Forms for such notices are contained in this chapter, as well as forms of *lis pendens*.

### 155. Summons (Wisconsin).<sup>2</sup>

STATE OF WISCONSIN

.....Court.....County.

<p>A....B....,  <div style="text-align: right;">Plaintiff,</div> <p style="text-align: center;">vs.</p> <p>C....D....,  <div style="text-align: right;">Defendant.</div> </p></p>
---

THE STATE OF WISCONSIN to the said Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

E....F....,

Plaintiff's Attorney,

P. O. Address....., County, Wis.

*[If the complaint be not served with the summons, the words "of which a copy is herewith served upon you" may be omitted or erased. Where the only relief sought is the recovery of money and a copy of the complaint is not served with the summons, there may be added at the foot of the summons a brief notice specifying the sum to be demanded by the complaint. Said notice may be substantially as follows, following the word "complaint" in the form. And you are hereby notified that the only relief sought in this action is the recovery of money, and that sum to be demanded by the complaint herein is .....dollars, with interest from ....., 19.....]*

<sup>2</sup> Wis. Stats. 1913 sec. 2630-2631.

**156. Notice of object of action in foreclosure.<sup>3</sup>**

STATE OF.....  
 .....Court .....County.

A....B...., Plaintiff, vs. C....D...., et al., Defendants.	}
--	---

To [*name defendants against whom no personal claim is made*],  
 defendants aforesaid:

The object of the above entitled action, in which a summons is herewith served upon you, is \* to foreclose a mortgage executed by E....F.... and A.... F...., his wife, to the plaintiff [*or, to one G.... H....*] upon the premises hereinafter described, on the....day of....., 19.., for the sum of.....dollars, with interest from the ....day of....., 19.., at.... per cent per annum, and which said mortgage was recorded on the ....day of....., 19.., at ....o'clock ..M., at page ...., of volume .... of mortgages, in the office of the register of deeds of said county of ..... and state of ....., \*\* and that the premises affected in this action are described as follows: [*here insert accurate description of the property as described in the complaint.*] That said described property and no other is affected by the above entitled action, and no personal claim is made against you or either of you.

Dated ....., 19..

J....K....  
 Plaintiff's Attorney.

**157. The same, in partition.**

[*Proceed as in Form 156, and insert between \* and \*\* the following*]: to have partition adjudged of the premises hereinafter described among the owners thereof, or to obtain a sale thereof and a division of the proceeds among the owners if it

<sup>3</sup>This notice is to be served with summons upon all defendants against whom no personal claim is made. Wis. Stats. 1913 sec. 2634; Minn. Gen. Stats. 1913 sec. 8026; N. Dak.

Rev. Codes 1905 sec. 6836; S. Dak. C. C. P. 1908 sec. 107. In Iowa the substance of this notice must be inserted in the original notice.

shall appear that partition of the same cannot be made without great prejudice to said owners.

[For suitable language to be inserted in other actions affecting the title to real property, see the various forms given in this chapter for notices of pendency of action.]

**158. Lis pendens in foreclosure.<sup>4</sup>**

State of.....  
 .....Court .....County.

A....B...., vs. C....D...., Defendant.	}	Plaintiff,
---	---	------------

NOTICE is hereby given that an action has been commenced and is pending in the above named court, upon a complaint of the above named plaintiff against the above named defendant; that the object of said action is \* to foreclose a mortgage bearing date the ...day of ....., 19.., executed by E.... F.... and A.... F...., his wife, to the plaintiff [or, to one G.... H....] and recorded in the office of the register of deeds for .....county, ....., on the .... day of ....., 19.., at ....o'clock ..M, in volume ....of mortgages, page ....\*\*; and that said action affects the title to the real estate described as follows, to-wit: [*here insert accurate description of the property affected as the same is described in the complaint or petition.*]

Dated....., 19..

J....K....  
 Plaintiff's Attorney.

<sup>4</sup>Wis. Stats. 1913 sec. 3187; Ariz. R. S. 1913 sec. 1647; Ark. Dig. of Stats. 1901 sec. 5149; Cal. C. C. P. 1906 sec. 409, 749, 755; Colo. Code Ann. 1911 sec. 238, 296; Idaho Rev. Codes 1908 sec. 4142, 4563; Minn. Gen. Stats. 1913 sec. 8025; Missouri R. S. 1909 sec. 8211 (in Missouri the notice must state in addition "the term of court to which such suit is brought"); Neb. R. S. 1913 sec. 7651; Montana Rev. Codes 1907 sec. 6517, 6889; N. Dak. Rev. Codes 1905 sec.

6837; S. Dak. C. C. P. 1908 sec. 108; Okla. Comp. Laws 1909 sec. 5621, 5622; Oregon Laws 1910 sec. 7130, 7260; Tex. Civ. Stats. Ann. 1913 art. 6837; Utah Comp. Laws 1907 sec. 2953, 3525; Wash. Rem. and Bal. Code 1910 sec. 243, 232; Wyo. Comp. Stats. 1910 sec. 4374, 4375. In Iowa this notice is only to be filed when a part of the property which is the subject of the action is situated in another county than the one in which the action is brought, and the notice is



[*The Codes quite generally provide that if the defendant in his answer sets up an affirmative cause of action affecting real property, he may also file a lis pendens, in which case the forms herein given may be used with suitable changes. If the object of the action be not to foreclose a mortgage but to obtain other relief the above form may be easily modified so as to state the same.*]

**159. The same, in partition.**

[*Between \* and \*\* insert*]: to have partition adjudged of the premises hereinafter described among the owners thereof, or for a sale thereof and a division of the proceeds among the owners according to their respective rights and interests, if it shall appear that partition cannot be made without prejudice to said owners.

**160. The same, in an action to quiet title.<sup>5</sup>**

[*Between \* and \*\* insert*]: to quiet the title to the lands hereinafter described and to establish the plaintiff's claim against any claim of the defendant thereto and forever bar said defendants from any right or title in the said premises adverse to the plaintiff.

**161. The same, in an action to foreclose a mechanic's lien.<sup>6</sup>**

[*Between \* and \*\* insert*]: to foreclose and enforce a mechanic's lien upon the premises hereinafter described and the dwelling house [*or, the building, describing it*] situate thereon,

to be filed with the clerk of the district court of said county. Iowa Ann. Code 1897 sec. 3544.

<sup>5</sup> In Minnesota the statement should be "to quiet the plaintiff's title to the lands hereinafter described, and for the purpose of determining the claims made by the defendants by which they claim an estate in said lands or an interest therein or a lien thereon adverse to the plaintiff, and also for determining the rights of the parties respectively in said lands." In case of unknown defendants they may be described as such in the title of the action as follows: "Also all other persons un-

known claiming any right, title, estate, interest, or lien in the real estate described in the complaint herein," and they may be served on by publication of the summons as in case of non-residents, in which case the *lis pendens* must also be published with and immediately following the summons. Minn. Gen. Stats. 1913 sec. 8060, 8061.

<sup>6</sup> In Minnesota, if the action be brought to foreclose a mechanic's lien, a copy of the summons (omitting the caption) must be incorporated in the notice of pendency of the action. Minn. Gen. Stats. 1913 sec. 7030.



for work, labor and services performed [and materials furnished] in and about the erection of the said dwelling house [or, other building], such lien having attached to said property pursuant to the laws of the state of . . . . ., and amounting to the sum of . . . . .dollars, together with the costs of this action.

**162. The same, in an action to establish a trust.**

[*Between \* and \*\* insert*]: to establish in favor of the plaintiff a trust in the lands hereinafter described and to compel the defendant to convey the said premises to the plaintiff.

**163. The same, in an action for specific performance.**

[*Between \* and \*\* insert*]: to enforce the specific performance of a certain contract in writing made between the plaintiff and one C. . . . D. . . . , dated . . . . ., 19. . . , and recorded in the office of the register of deeds of . . . . .county on the . . . .day of . . . . ., 19. . . , in book . . . . , on page . . . . , by which contract the said C. . . . D. . . . agreed among other things to convey to the plaintiff, his heirs or assigns, the premises hereinafter described, upon due payment of the consideration therein named and performance of the other terms of said contract, and said contract having been duly performed by the plaintiff on his part.

**164. The same, in ejectment.**

[*Between \* and \*\* insert*]: to recover the possession of the premises hereinafter described, together with damages for the unlawful withholding thereof and for waste done thereto in the sum of . . . . .dollars.

**165. The same, in an action in which a warrant of attachment affecting real property has been issued (South Dakota).<sup>7</sup>**

[*After \* insert*]: to recover judgment upon a promissory note executed and delivered by the defendant, C. . . . D. . . . , to the plaintiff for the sum of . . . . .dollars [*or otherwise state the object of the action and the relief demanded*] and that a

<sup>7</sup> S. Dak. C. C. P. 1908 sec. 108.

warrant of attachment was on the . . . day of . . . . ., 19. . ., duly issued out of this court in this action against the defendant C. . . . D. . . ., and directed to the sheriff of the county of . . . . ., and delivered to him for execution, whereby the following real property has been duly attached and is affected viz: [*here describe accurately the property attached*].

Dated. . . . ., 19. . .

E. . . . F. . . .  
Plaintiff's Attorney.

### 166. Lis pendens (Kansas).<sup>8</sup>

[*Title.*]

[*Venue.*]

A. . . . B. . . . being first duly sworn says that an action has been commenced and is pending in the above named court upon a complaint of the above named plaintiff [*proceed to set forth the object of the action and the property affected thereby as in the immediately preceding forms*].

[*Jurat.*]

A. . . . B. . . .  
[*Official title.*]

### 167. Lis pendens (Montana).

[*Title.*]

NOTICE IS HEREBY GIVEN, That a suit has been commenced in said court, by the above named plaintiff, against the above named defendant . . . ., which suit is now pending; that the object of said suit is to foreclose and determine a lien of a certain mortgage, of date the . . . day of . . . . ., 191. . ., executed by the said C. . . . D. . . . defendant. . . . to said plaintiff . . . ., and recorded in the recorder's office, of said county of . . . . . in Book . . . . of Mortgages, at Page . . . .; and to foreclose the defendant's equity of redemption in and to the premises described in said mortgage.

Said premises are described, as follows, to-wit: [*insert description*].

Dated. . . . ., 19. . .

L. . . . M. . . .  
Plaintiff's Attorney.

<sup>8</sup>In Kansas the *lis pendens* must be "a verified statement." Kans. Gen. Stats. 1909 sec. 5679.

168. *Lis pendens* (Washington).

[Title.]

[Venue.]

TO ALL WHOM this may concern, notice is hereby given;

1. That an action affecting the title to certain real property hereinafter particularly described has been commenced and is now pending in the superior court of the state of Washington, for . . . . . county.

2. That the name..of the plaintiff..in said action is A.... B.... and the name..of the defendant..therein is C.... D.....

3. That the object of said action is to [*state object*] the following described real estate, situate in the county of . . . . . and state of Washington, to-wit: [*describe real estate*] and all persons dealing with said defendant in relative to said real estate subsequent to the filing hereof, will take subject to the rights of the plaintiff as established herein.

A....B...., Plaintiff..

L....M....

Attorney..for Plaintiff..

169. *Lis pendens* in application for laying out, widening, vacating, or extending street, alley, water channel, park highway, or other public place (Wisconsin).<sup>9</sup>

[Insert appropriate title of proceedings, as for instance]:

In the matter of the application of  
A.... B...., C.... D.... [etc.,  
*naming all petitioners*] to the com-  
mon council of the city of.....  
for the laying out of a certain street  
in said city, and the condemnation  
of lands therefor.

To whom it may concern:

Notice is hereby given that the undersigned petitioners A.... B...., C.... D.... [*etc., giving names of all*], will on the ....day of ....., 19.., file with O.... P...., Esq., city clerk of the city of ....., their application in writing to

<sup>9</sup> Wis. Stats. 1913 sec. 3187a.

the common council of said city, for the laying out and opening of a certain street or highway in said city, extending from .....to ..... [*name termini*], and praying that the following described parcels of land be taken and condemned for such purpose [*describe the parcels with accuracy, as in a deed.*]

Notice is further hereby given that a correct map of the said proposed street or highway, and of the land to be affected thereby, is hereby attached to and made part of this notice, marked Exhibit "A."

Dated....., 19.....

A.... B....

C.... D....

E.... F....

## CHAPTER VII.

### PERSONAL, SUBSTITUTED AND CONSTRUCTIVE SERVICE OF SUMMONS.

170. Certificate of personal service by sheriff.
171. Affidavit of personal service of summons by a person not an officer.
172. The same; Washington.
173. The same where several defendants have been served upon.
174. Affidavit of service on infant defendant.
175. Affidavit of service on defendant judicially declared to be incompetent.
176. Affidavit of service on member of family, defendant not found.
177. Affidavit of service on municipal corporation.
178. Affidavit of service on business corporation; Wisconsin.
179. Sheriff's return of personal service of original notice; Iowa.
180. Affidavit of service by one not an officer; Iowa.
181. Affidavit to allow service of original notice on Sunday; Iowa.
182. Return of service of original notice on member of family; Iowa.
183. Admission of personal service by defendant, endorsed on summons.
184. Affidavit for publication of summons, defendant non-resident or residence unknown, or a foreign corporation; Wisconsin.
185. The same, defendant absconding or concealed; Wisconsin.
186. The same, defendant claiming interest in property; Wisconsin.
187. The same, in foreclosure of mortgage or lien; Wisconsin.
188. The same, in divorce; Wisconsin.
189. The same, against private corporation without officers; Wisconsin.
190. The same, defendants unknown; Wisconsin.
191. Supporting affidavit of sheriff to accompany the foregoing; Wisconsin.
192. Order of publication, defendant foreign corporation; Wisconsin.
193. The same, defendant non-resident or residence unknown; Wisconsin.
194. The same, defendant absconding or concealed; Wisconsin.
195. The same, defendant claiming interest in property; Wisconsin.
196. The same, in foreclosure; Wisconsin.
197. The same, action to foreclose lien other than mortgage; Wisconsin.
198. The same, in divorce.
199. The same, defendant a domestic corporation without proper officers; Wisconsin.

- |  |   |
|--|---|
| <p>200. The same, unknown defendants.</p> <p>201. Affidavit of mailing; Wisconsin.</p> <p>202. Affidavit of publication; Wisconsin.</p> <p>203. Affidavit of service without the state; Wisconsin.</p> <p>204. Affidavit for publication, defendant non-resident and not found; Minnesota.</p> <p>205. The same, residence of defendant unknown; Minnesota.</p> <p>206. The same, defendant foreign corporation; Minnesota.</p> <p>207. The same, defendant absconding or concealing himself; Minnesota.</p> <p>208. Affidavit for service by publication; Iowa.</p> <p>209. Affidavit for publication of summons; South Dakota.</p> <p>210. Supporting affidavit by sheriff; South Dakota.</p> <p>211. Order of publication; South Dakota.</p> <p>212. Affidavit for publication against unknown defendants in foreclosure; South Dakota.</p> <p>213. Order for publication against unknown defendants in foreclosure; South Dakota.</p> <p>214. Affidavit for publication; Nebraska.</p> | <p>215. Notice to be published, defendant not found; Nebraska.</p> <p>216. Affidavit for publication, unknown heirs; Nebraska.</p> <p>217. Order of publication on unknown heirs; Nebraska.</p> <p>218. Notice to be published, unknown heirs; Nebraska.</p> <p>219. Affidavit for publication of summons; California.</p> <p>220. Order for publication of summons; California.</p> <p>221. Affidavit for publication; California.</p> <p>222. Affidavit of mailing; California.</p> <p>223. Order for publication of summons; Colorado.</p> <p>224. Affidavit of mailing; Colorado.</p> <p>225. Affidavit for publication in vacating; Missouri.</p> <p>226. Order of publication in term time; Missouri.</p> <p>227. Order of publication by the clerk in vacation; Missouri.</p> <p>228. The same in foreclosure; Missouri.</p> <p>229. Affidavit for publication; Montana.</p> <p>230. Order for publication of summons; Montana.</p> <p>231. Affidavit of mailing; Montana.</p> <p>232. Affidavit for publication of summons; Oklahoma.</p> <p>233. Affidavit for publication of summons; Washington.</p> |
|--|---|

As jurisdiction of the defendant depends upon proper service of the summons, and as the record is required to show such service, it is very evident that in default of an appearance on the part of the defendant the proof of service is of the utmost importance. In the code states generally the statutes require the service of the summons, and accompanying complaint if served with summons, to be made by delivering a copy thereof to the defendant. While the provisions of the various states differ considerably in their re-



requirements, in the majority of the states service may be made as follows:

1. If the action be against a minor under fourteen years of age service is to be upon the minor personally and also upon the guardian if he have one, or if he have none upon his father or mother, or in default of either of these persons upon the person with whom the minor resides or who has custody of his person.

2. If the action be against a person judicially declared to be incompetent the service is to be made upon such person and upon his guardian.

3. If the action be against a joint stock company or domestic corporation the service is to be made upon certain specified officers of such company or corporation; if against a foreign corporation, upon certain specified agents within the state if such exist.

4. In other cases the service is to be made upon the defendant personally. It is provided in some of the states that if the defendant be not found the summons may be served by leaving a copy thereof at his usual place of abode in the presence of some member of the family of suitable age and discretion, who shall be informed of the contents thereof.

The statutes vary considerably as to the officer or person who is authorized to make service of the summons, as will appear by consulting the foot note.<sup>1</sup>

<sup>1</sup> In the following states service may be made by the sheriff of the county in which service is made, or by any person not a party to the action: Wisconsin (Stats. 1913 sec. 2635); Arizona (R. S. 1913 sec. 438, 446); California (C. C. P. 1906, sec. 410); Colorado (Stats. Ann. 1911 sec. 39); Idaho (Rev. Codes 1908, 4143); Minnesota (Gen. Stats. 1913 sec. 7730); Montana (Rev. Codes 1907 sec. 6518); North Dakota (Rev. Codes 1905 sec. 6839); South Dakota (C. C. P. 1908 sec. 111); Tex. Civ. Stats. Ann. 1913 art. 1852, 1870; Utah (Comp. Laws 1907 sec. 2940); Washington (Rem. and Bal. Code 1910 sec. 225), but in California, Idaho and Montana the party making service must be over eighteen years of age, in Utah over twenty-one years of age, in Washington over twenty-one and

competent to be a witness in the case, in Arizona and Texas a disinterested person competent to make oath to the fact, and in South Dakota an elector of the county. In Iowa service may be made by any person not a party (Iowa Ann. Code 1897 sec. 3516); in Missouri it must be by the officer to whom the summons is directed or if the office be vacant by an elisor appointed by the court, (Mo. R. S. 1909, sec. 1759; *McFarland vs. Tunnel*, 51 Mo. 334). In the following states service must be made by the officer to whom the summons is directed or by any person not a party to the action appointed by such officer, and the authority of such person shall be endorsed upon the summons; Kansas (Gen. Stats. 1909 sec. 5657); Nebraska (R. S. 1913

170. Certificate of personal service by sheriff.<sup>2</sup>

State of .....  
.....Court .....County.

A.... B....,	} Plaintiff,
vs.	
C.... D....,	
	Defendant.

County of.....ss.

I HEREBY CERTIFY that I received the within summons on the...day of....., 19.., and that on the...day of....., 19.., at the city of....., in.....county and state of....., I served the said summons [and complaint, or notice of object of action hereto annexed] on the above named defendant, C.... D...., by then and there delivering to him personally and leaving with him a true copy of said summons [and complaint, or notice of object of action].

Dated....., 19..

E.... F...., Sheriff

[In Wisconsin and Utah the following statement should be added to the foregoing certificate (Wis. Stats. 1913, sec. 2638a; Utah Comp. Laws, 1907, sec. 2944): and that at the time of

sec. 7630); Oklahoma (Comp. Laws 1909 sec. 5597); Wyoming (Comp. Stats. 1910 sec. 4358). In Arkansas (Dig. of Stats. 1904 sec. 6041) service must be made by the sheriff to whom the summons is directed unless he be a party to the suit, or it appear by affidavit that the obtaining of the sheriff will occasion such delay that the same cannot be served in time, in which case it may be served by the jailor, coroner, or constable, provided the clerk endorse on such summons that the same may be so served; it may be served also by any person appointed by the officer to whom the summons is directed by endorsing on the summons or in case on contract for the recovery of money only by any person not a party to the action. In Oregon (Laws 1910 sec. 15, 54), service is to be made by the sheriff of

the county where the defendant is found, or by his deputy, or by a person specially appointed by him or by the court or judge thereof in which the action is commenced, and the sheriff or other person to whom the summons is delivered must endorse thereon the date of such delivery.

<sup>2</sup>Generally, if not universally, if the summons be served by the sheriff or by any other officer to whom it is directed under the provisions of the statutes, the return should be by certificate of the officer without verification. Ordinarily the foregoing form will be sufficient. In case, however, the particular statute require that the original summons be exhibited to the party or read to him in order to make complete service, the certificate should state the fact.

said service I endorsed upon the copy of the summons so served the said date upon which the same was served and signed my name thereto and added thereto my official title].

**171. Affidavit of personal service of summons by a person not an officer.**

[*Title.*]

[*Venue.*]

E. . . . F. . . . , being duly sworn says he is now and was at the date hereinafter stated, a citizen of said state over the age of . . . years and not a party to this action; [*or otherwise state the facts made necessary by the statute in the particular case to qualify the person to make service of the summons. See Note 1, supra.*] that on the . . . day of . . . , 19. . . , at the city of . . . , in . . . county and state of . . . , he personally served the within summons [and complaint, *or* notice of object of action] on the above named defendant,\* C. . . . D. . . . , by then and there delivering to him personally and leaving with him a true copy of said summons [and complaint, *or*, notice of object of action] \*\* and that he knew the person so served to be the person mentioned and described in said summons as defendant therein\*\*\* and that at the time of such service he endorsed upon the copy of the summons so served the said date upon which the same was served and signed his name thereto.

E. . . . F. . . .

[*Jurat.*]

[*The last two clauses of this return with regard to knowledge by the affiant of the identity of the person served and endorsement upon the copy of the date of service are made necessary in Wisconsin by Wis. Stats. 1913 sec. 2638a and 2642,*

**172. The same, (Washington form).**

[*Title.*]

[*Venue.*]

A. . . . B. . . . , being first duly sworn, on oath deposes and says: that he now is, and at the time of making service herein was, a citizen of the United States, over twenty-one years of age, and competent to be a witness on the trial hereof; that he resides at . . . Washington; that on the . . . day of . . . , 19. . . , at . . . he served the annexed summons upon

C.... D...., the defendant.. therein named by delivering to and leaving with him a true, full and correct copy of said summons duly certified by affiant to be a true copy of the original summons herein, and that he knew the person.. so served to be the same person.. named and described in said summons as defendant in said action.

A.... B....

[*Jurat.*]

**173. The same when several defendants have been served upon.**

[*Title and commencement as in last preceding form; after the introductory statement showing the competency of the affiant to make service proceed as follows*]: that he personally served the within summons [and complaint or notice of object of action] on the above named defendants C.... D...., G.... H.... and J.... K.... [*name all defendants served on*] by delivering to each of said defendants personally and leaving at the time and place hereinafter particularly set forth a true copy of said summons [and complaint or notice of object of action] and that he knew each of the persons so served to be the identical person of that name mentioned and described in said summons as a defendant therein, and that at the time of making such service in each case he endorsed upon the copy of the summons so served the date upon which the same was served and signed his name thereto. The time and place at which such service was made upon each of said defendants are truly set forth opposite the name of said defendant in the following statement:

Name of Defendant.	Time of Service.	Place of Service.
C.... D....	.....	.....
G.... H....	.....	.....
J.... K....	.....	.....

[*Jurat.*]

E.... F....

**174. Affidavit of service on infant defendant.<sup>3</sup>**

[*Proceed as in Form 171 to \**] C.... D...., who is a minor under the age of fourteen years, by delivering to and leaving with him the said C.... D.... a true copy of said summons [and complaint, *or* notice of object of action] and also by then and there delivering to and leaving with G.... H...., the father [*or* mother, *or* guardian] of said C.... D...., a true copy of said summons [and complaint, *or*, notice of object of action] and that he knew the person so served as defendant to be the person named in the said summons as defendant therein, and also knew the said G.... H.... to be the father [*or*, mother, *or*, guardian] of said infant defendant [*conclude as in Form 171 from \*\*\**].

[*In case the minor defendant has no father or mother or guardian within the state, that fact should be stated in the return and the return should also state that the copy of the summons was delivered to the person having the care and control of the minor or with whom he resides.*]

**175. Affidavit of service on defendant judicially declared to be incompetent.<sup>4</sup>**

[*Proceed as in Form 171 to \**] C.... D...., who is a person judicially declared to be of unsound mind [*or*, incapable of conducting his own affairs in consequence of excessive drinking, *or otherwise*] and for whom a guardian has been appointed by delivering to and leaving with him, the said C.... D...., personally a true copy of said summons [and complaint, *or*, notice of object of action] and also by delivering to and leaving with G.... H...., who is a duly appointed guardian of said defendant, a true copy of said summons [and complaint, *or*, notice of object of action] and that he knew the person so served as defendant to be the same person described in the said summons as defendant therein and knew the said G.... H.... so served to be the guardian of said defendant [*conclude as in Form 171 from \*\*\**].

<sup>3</sup>This form will be found to cover the requirements in most of the states; in case however the local statute requires delivery of a copy of the summons to any other person or the doing of any other act,

such as the reading of the summons the affidavit should of course be so amended or added as to state the required fact.

<sup>4</sup>See last preceding note.



**176. Affidavit of service on member of family, defendant not found.**

[*Proceed as in Form 171 to \**] C.... D...., by leaving a true copy of said summons [and complaint, *or*, notice of object of action] at the usual place of abode of the said C.... D...., at....., in said county, in the presence of E.... F...., who was and is one of the family of the said C.... D...., and of suitable age and discretion, and whom I informed of the contents thereof; and further that said defendant C.... D.... could not be found [*conclude as in Form 171 from \*\*\**].

**177. Affidavit of service on municipal corporation.<sup>5</sup>**

[*Proceed as in Form 171 to \* and continue as follows*] the town [*or*, city] of C.... D...., by then and there delivering to and leaving with G.... H...., who is the chairman of said defendant town, and by then and there delivering to and leaving with J.... K...., who is the town clerk of the said defendant town [*or otherwise name the proper officer or officers upon whom service is required to be made by the statute*] a true copy of said summons [and complaint, *or*, notice of object of action] and that he knew the persons to whom he delivered the said summons [and complaint, *or*, notice of object of action] as aforesaid to be such officers as aforesaid of said defendant town [*or*, city, *or other municipal corporation*] and that he also knew the corporation so served upon by him to be the defendant mentioned in the said summons. [*Conclude as in Form 171 from \*\*\**].

**178. Affidavit of service on business corporation (Wis. Stats. 1913 sec. 2637 sub. 10).**

[*Proceed as in Form 171 to \**] C.... D...., a corporation, by delivering to and leaving with E.... F...., who is the president [*or*, vice-president, secretary, cashier, treasurer, director, *or*, managing agent] of the said defendant corporation and who is known to this affiant to be such officer thereof, a true copy of the said summons [and complaint,

<sup>5</sup>The last clause is made unnecessary in Wisconsin by the provisions of sec. 2642 Wis. Stats. 1913 and

Keman v. N. P. Ry. Co. 103 Wis. 356, 79 N. W. 403.



or, notice of object of action] and that he knew the corporation so served upon by him to be the defendant mentioned with said summons. [Conclude as in Form 171 from \*\*\*].

[There are varying provisions in the different statutes as to the particular corporate officers or agents to be served on but it is not deemed necessary to insert a separate form for each provision for the reason that the variation from the forms hereinbefore given can be easily made by reference to the statute, care being taken to insert all the necessary facts to bring the case within the particular provision.]

**179. Sheriff's return of personal service of original notice (Iowa Code 1897 secs. 3518, 3519).**

[Venue.]

I hereby certify that I received the within [or, annexed] original notice for service on the....day of....., 19.., and that on the....day of....., 19.., at.....township in said county I served the said notice personally on A.... B...., the defendant named in said notice, by reading the same to him [or, by offering to read the same to him, he refusing to hear it read] and by delivering to him personally a copy of the said notice [or, by offering to deliver to him a copy of said notice, he refusing to receive the same].

Dated....., 19..

E.... F....,  
Sheriff of.....County, Ia.

**180. Affidavit of service by one not an officer (Iowa).**

[Venue.]

E.... F...., being duly sworn says that he received the within [or, annexed] original notice for service on the....day of....., 19.., [here proceed as in Form 179].

E.... F....

[Jurat.]

**181. Affidavit to allow service of original notice on Sunday (Iowa Code 1897 sec. 3522).**

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff named in the within original notice; that C.... D...., the defendant named in said notice, is about to remove from the

state, and that personal service of such notice upon him will not be possible unless such service be made upon this Sunday, the . . . day of . . . , 19 . . . , [or state other fact or facts showing that personal service cannot be made unless made on Sunday].

A . . . B . . .

[*Jurat.*]

**182. Return of service of original notice on member of family (Iowa Code 1897 sec. 3518).**

[*Venue.*]

I, E . . . F . . . , sheriff of . . . county, Iowa, hereby certify that I received the within [or, annexed] original notice to serve on the . . . day of . . . , 19 . . . , and that on the . . . day of . . . , 19 . . . , I served the same on C . . . D . . . , the defendant named therein, by leaving a copy of said notice at the dwelling house of said defendant at . . . township, in said county, that being his usual place of residence, with G . . . H . . . , a son [or, wife, as the case may be] of the said defendant, the said G . . . H . . . being a member of the defendant's family over the age of fourteen years, and the said defendant C . . . D . . . not being found in . . . county.

Dated . . . , 19 . . .

J . . . K . . .

Sheriff of . . . County, Ia.

**183. Admission of personal service by defendant, endorsed on summons.<sup>6</sup>**

I, C . . . D . . . , the defendant in the within entitled action, herewith admit and acknowledge due and personal service upon me of the within summons [*in Iowa*, original notice], together with the annexed complaint [or, notice of object of action] at the city of . . . , state of . . . , this . . . day of . . . , 19 . . .

In presence of

E . . . F . . .

C . . . \*D . . . ,

Defendant.

<sup>6</sup>It is generally provided that a defendant may admit service of the summons and that this admission when endorsed upon the summons shall have the same effect as a certificate or affidavit of personal service. In Iowa the admission must be dated as well as signed, (Iowa Code 1897 sec. 3518) and in Missouri there

should be added to the admission of service the words "and I hereby waive the necessity of the service of said summons by an officer." (Mo. R. S. 1909 sec. 1761.) Some statutes require that the admission be witnessed and this would seem to be wise in all cases even when not specially required by the statute.

**184. Affidavit for publication of summons, defendant non-resident or residence unknown, or a foreign corporataion (Wis. Stats. 1913 sec. 2639 sub. 1).<sup>7</sup>**

[*Title of cause.*]

[*Venue.*]

A. . . . B. . . . being duly sworn says that he is the plaintiff above named [*or, that he is the attorney for the plaintiff above named*] and makes this affidavit on his own [*or, said plaintiff's*] behalf; that the above entitled action has been commenced by the issuance of a summons therein, of which a copy is hereunto annexed; that the plaintiff's complaint herein is duly verified, and has been filed with the clerk of the. . . . court of. . . . county<sup>8</sup>; and that a copy thereof

<sup>7</sup> All of the states provide for the publication of the summons or a notice of like nature in certain classes of actions in case the defendant is a non-resident or can not be found within the state or is unknown, but the provisions are quite diverse, and the classes of actions do not agree. In some states there must be an order for the publication, and in some none is necessary while the specific requirements as to the contents of the affidavit or other proof required before publication can be made are very different. In some states a copy of the summons must be mailed to the defendant's address if known, while in other states this is not necessary. In many states personal service made without the state is made equivalent to completed publication. It has not been thought necessary or practicable to endeavor to print forms for publication proceedings for all the states in this work in view of the fact that printed blanks for the purpose are usually to be found in every law office. The forms here inserted have been prepared with reference to the statutes of several of the code states and may easily be adapted to the practice in any state. The practitioner will of course remember that when service is made by publication or by service outside of the state under an order of publication no

personal judgment for money damages can be obtained which will be capable of enforcement against such defendant, but only a judgment settling the status of the defendant (as in case of divorce) or a judgment enforceable against or affecting the title to property within the jurisdiction of the court. The statutes regulating publication of the summons in the various states covered by this work are as follows: Ariz. R. S. 1913 sec. 447-449; Ark. Dig. of Stats. 1904 sec. 6055, 6056; Cal. C. C. P. 1906 sec. 412, 413; Colo. Stats. Ann. 1911 sec. 45, 46; Idaho Rev. Codes 1908 sec. 4115, 4146; Iowa Ann. Code 1897 sec. 3534, 3535; Kans. Gen. Stats. 1909 sec. 5671, 5672; Minn. Gen. Stats. 1913 sec. 7737, 7738; Mont. Rev. Codes 1907 sec. 6520, 6521; Mo. R. S. 1909 sec. 1770, 1776; Neb. R. S. 1913 sec. 7640, 7641; N. Dak. Rev. Codes 1905 sec. 6840, 6842; S. Dak. C. C. P. 1908 sec. 112; Okla. Comp. Laws 1909 sec. 5612, 5614; Oregon Laws 1910 sec. 56-60; Tex. Civ. Stats. Ann. 1913 art. 1874-1878; Utah Comp. Laws 1907 sec. 2949, 2950; Wash. Rem. & Bal. Code 1910 sec. 228, 229; Wyo. Comp. Stats. 1910 sec. 4366-4370.

<sup>8</sup> The complaint must be verified and filed before the order is made. Wis. Stats. 1913 sec. 2640.

is hereto attached; that a cause of action exists in favor of the plaintiff against said defendant C.... D.... [or, that this action relates to real estate within this state] and that defendant C.... D.... is a necessary [or, proper,] party to said action as fully appears by said complaint;\* that said defendant C.... D.... is a non-resident of the state of Wisconsin [or, that said defendant's residence is unknown, or that said defenant C.... D.... is a foreign corporation organized and existing under the laws of the state of .....]\*\* and that said plaintiff is unable, with due diligence, to make service of the summons in said action upon the said defendant; that the said defendant cannot be found within the state of Wisconsin, although diligent effort to find him and serve upon him the said summons has been made, as appears by the return of the sheriff of.....county endorsed upon said summons [or, by the affidavit of the sheriff of.....county hereto attached]; that the said defendant's post office address is....., state of....., and that said defendant's residence is....., state of..... [or, that the said plaintiff is unable to ascertain either the post office address or the residence of said defendant, although the said plaintiff has made due and diligent effort to ascertain them];\*\*\* that said defendant has property within the state of Wisconsin, to-wit [*here briefly describe the property*] [or, that the cause of action set out in said plaintiff's complaint herein arose within the state of Wisconsin, and that the above entitled court has jurisdiction of the subject of said action].

[Jurat.]

A.... B....

**185. The same, defendant absconding or concealed (Wis. Stats. 1913 sec. 2639 sub. 2).**

[*Proceed as in Form 184 to \* and insert between \* and \*\* as follows*]: that said defendant is a resident of the state of Wisconsin and has departed from the said state of Wisconsin with intent to defraud his creditors [or, with intent to avoid the service of a summons; or, that said defendant keeps himself concealed within the state of Wisconsin, with intent to defraud his creditors, or, with intent to avoid the service of a summons]; [*continue as in Form 184 after \*\* down to \*\*\*, and omit the allegations after \*\*\**].

[Jurat.]

A.... B....

**186. The same, defendant claiming interest in property (Wis. Stats. 1913 sec. 2639 sub. 3).**

[*Between \* and \*\* in Form 184 insert*]: that the subject of said action is real [*or, personal*] property in the state of Wisconsin, to-wit, [*here describe the property as in complaint*]; that said defendant has or claims a lien or interest, actual or contingent, in said property, as follows [*here state the nature of the interest claimed*] [*or, that the relief demanded by the plaintiff in said action consists wholly [*or, partially*] in excluding said defendant from any lien or interest in said property*]; [*continue as in Form 184 after \*\*, omitting the allegations after \*\*\**].

A.... B....

[*Jurat.*]

**187. The same, in foreclosure of mortgage or lien (Wis. Stats. 1913 sec. 2639 sub. 4).**

[*Between \* and \*\*\* in Form 184 insert*]: that said action is brought to foreclose [*or, redeem from, or, satisfy*] a mortgage upon real property situate in.....county, in the state of Wisconsin, executed by E.... F.... and recorded in the office of the register of deeds of.....county, in the state of Wisconsin, in volume....of mortgages, upon page....; that there is now due upon said mortgage, and the debt secured thereby the sum of.....dollars, and upwards; [*or otherwise describe the claim or lien which the action is founded upon*].

[*Omit the allegations following \*\*\* in Form 184 and insert in place thereof*]: that the said defendant C.... D.... has or claims to have an interest or lien by [*here describe nature of lien*] upon the premises described in said mortgage, which accrued subsequent to the mortgage of said plaintiff; and that the relief demanded in this action consists partially in excluding and foreclosing the said defendant of and from all lien or interest in said mortgaged premises, and that said defendant is a necessary [*or, proper*] party to this action.

A.... B....

[*Jurat.*]



**188. Same in divorce (Wis. Stats. 1913 sec. 2639 sub. 5).**

[*Between \* and \*\* insert*]: that this action is brought by the plaintiff to obtain a divorce from the defendant for one of the causes prescribed by law as fully appears in the said complaint; [*omit the allegations of Form 184 following\*\*\**].

**189. The same, against private corporation without officers (Wis. Stats. 1913 sec. 2639 sub. 6).**

[*Between \* and \*\* of Form 184 insert*]: that the said defendant is a private corporation organized under the laws of this state, and that the proper officers upon whom to make service of the summons in this action do not exist [*or, cannot be found*]; that the plaintiff has made [*or, caused to be made*] diligent inquiry and effort to find the president, or chief officer, vice-president, secretary, or cashier, treasurer, director or managing agent of said corporation, in order to make service of said summons upon him, and that no such officer or agent exists [*or, that no such officer or agent can be found*]; that the plaintiff has also made diligent effort to find the general office of said corporation or the place where its books are kept within this state and has been unable to find any such office, and upon information and belief states that said defendant has no such office within this state.

[*Omit the allegations of Form 184 after \*\*\*.*]

A.... B....

[*Jurat.*]

**190. The same, defendants unknown (Wis. Stats. 1913 sec. 2639).**

[*Between \* and \*\* of Form 184 insert*]: that the subject of this action as more fully appears from the said complaint on file is certain real [*or, personal*] property situated within this state, described as follows [*here insert description of the property*] and that certain persons, whose names are unknown to this plaintiff, and who are described in the title to this affidavit as unknown defendants, either have or claim to have some lien or interest, actual or contingent, in the said property, which lien or interest is subject to the claims of the plaintiff herein, and the relief demanded in this action consists wholly or partially in excluding such unknown defendants from any lien or interest in said property; that the said



plaintiff has been unable to make service of the summons in this action upon the said unknown defendants, although due diligent effort has been made to that end, and that the said unknown defendant cannot be found within the state of Wisconsin, and that the said plaintiff has been unable to ascertain either the post-office address or the residence of said unknown defendants, although the said plaintiff has made due and diligent effort to ascertain the same.

A.... B....

[*Jurat.*]

**191. Supporting affidavit of sheriff to accompany the foregoing (Wisconsin).**

[*Title of action.*]

[*Venue.*]

G.... H.... being first duly sworn says that he is the sheriff of.....county; that the summons in the above entitled action was delivered to him for service on the...day of....., 19..; that he has used due diligence to find the said defendants and make service of said summons upon them, but is unable with due diligence used for that purpose to find the defendants C.... D.... and E.... F.... or either of them in this state, and that he is informed and verily believes that said defendants C.... D.... and E.... F.... are not residents of nor now in this state, but at present residing and being in the city of....., in the state of.....

G.... H....

[*Jurat.*],

**192. Order of publication, defendant foreign corporation (Wis. Stats. 1913 sec. 2639 sub. 1 and sec. 2640).<sup>9</sup>**

[*Title of cause.*]

It appearing to my satisfaction, from the affidavits of the plaintiff above named and of G.... H...., the sheriff of said county, as well as from the verified complaint of the plaintiff on file in this action, that the above entitled action has been commenced and is now pending; that the plaintiff's complaint herein is duly verified and has been filed with the

<sup>9</sup> In Wisconsin the order of publication must be made within ten days after the date of the affidavit. Wis. Stats. 1913 sec. 2640.

clerk of the.....court of.....county; that a cause of action exists in favor of the above named plaintiff and against the above named defendant E.... F...., as fully set forth in said complaint, the grounds of which are [*here state the substance of the cause of action*] \* [or, that the defendant E.... F.... is a necessary, or, proper, party to the said action, which relates to real estate in this state] \*\* and that said defendant E.... F.... is a foreign corporation organized under the laws of the state of....., having its home office and place of business at....., in said state of....., and that L.... M...., who resides at....., in said state of....., is the president of said defendant; that said defendant E.... F.... has property within this state, viz: [*here describe the property*] [or, that the cause of action set out in said plaintiff's complaint arose within this state and that the above named court has jurisdiction of the subject of said action]; \*\*\* and that the said plaintiff is unable with due diligence to make service of the summons in said action upon the said defendant; that the said defendant cannot be found within the state of Wisconsin, although diligent effort to that end has been made, and that said defendant's post-office address is....., state of....., and said defendant's residence is....., state of..... [or, that the plaintiff is unable, after due diligence to ascertain either the post-office address or the residence of said defendant, although said plaintiff has made diligent effort to ascertain them]; and on motion of G.... H.... attorney of said plaintiff.

IT IS HEREBY ORDERED that service of the summons in said action upon the said defendant be made by the publication thereof in the X.... Y.... Z...., a newspaper published in the city of....., county of....., and state of Wisconsin, which said newspaper is hereby designated as most likely to give notice to the said defendant, once a week for six weeks, and that the first publication of said summons be made within three months from the date of this order, and that on or before the day of the first publication of said summons the said plaintiff shall deposit in the post-office of....., county of..... and state of Wisconsin a copy of said summons, together with a copy of the complaint [or, notice of object of action] in said action, securely enclosed in an envelope, and postage thereon duly prepaid and address to the said defendant at.....post-office, in the county of

.....and state of..... [*or*, that the deposit of a copy of the summons in said action, together with a copy of the complaint (*or*, notice of object of action) in said action in the post-office may be omitted, for the reason that the said defendant's post-office address cannot be ascertained].

It is hereby further ordered that at the option of the said plaintiff a copy of said summons, and a copy of said complaint [*or*, notice of object of action] be delivered to the said defendant personally, without the state of Wisconsin, which delivery shall have the same effect as completed publication and mailing thereof.

Dated....., 19..

J.... K....., Circuit Judge.  
 [*or*, County Judge,  
*or*, Court Commissioner].

**193. The same, defendant non-resident or residence unknown (Wis. Stats. 1913 sec. 2639 sub. 1 and sec. 2640).**

[*Proceed as in Form 192 and between \*\* and \*\*\* insert*]: that said defendant E.... F.... is not a resident of the state of Wisconsin [*or*, that the residence of said defendant E.... F.... is unknown] and that said defendant has property within this state, viz: [*here describe the property*] [*or*, that the cause of action set out in the said plaintiff's complaint arose within this state, and that the above named court has jurisdiction of the subject of said action].

**194. The same, defendant absconded or concealed (Wis. Stats. 1913 sec. 2639 sub. 2 and sec. 2640).**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that the said defendant E.... F.... is a resident of the state of Wisconsin and has departed from the said state of Wisconsin with intent to defraud his creditors [*or*, with intent to avoid service of summons] [*or*, that said defendant E.... F.... keeps himself concealed within the state of Wisconsin with intent to defraud his creditors] [*or*, with intent to avoid the service of summons].

**195. The same, defendant claiming interest in property (Wis. Stats. 1913 sec. 2639 sub. 3 and sec. 2640).**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that

the subject of this action is real [*or, personal*] property within this state, viz: [*insert description of property*], and that said defendant E.... F.... has or claims a lien or interest actual or contingent, in said property, as follows [*here describe the nature of the lien claimed*] [*or, that the relief demanded by the plaintiff in this action consists wholly [*or, partially*] in excluding said defendant E.... F.... from any lien or interest in said premises*].

**196. The same, in foreclosure (Wis. Stats. 1913 sec. 2639 sub. 4 and sec. 2640).**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that said action is brought to foreclose [*or, redeem from, or, satisfy*] a mortgage upon said real estate situated in..... county, state of Wisconsin, executed by O.... P.... to Q.... R.... and recorded in the office of the register of deeds of.....county, in said state, in volume....of mortgages on page...., upon which mortgage there is now due the sum of.....dollars, with interest from ....., 19..; that said defendant E.... F.... either has or claims to have an interest in or lien upon the premises described in said mortgage, which interest or lien is subsequent to the mortgage of said plaintiff; and that the relief demanded in this action consists partially in excluding the said defendant E.... F.... from all lien or interest in said mortgaged premises, and that the said defendant E.... F.... is a proper party to this action.

**197. The same, action to foreclose lien other than mortgage (Wis. Stats. 1913 sec. 2639 sub. 4 and sec. 2640).**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that the said action was brought to foreclose [*or, redeem from, or, satisfy*] a certain claim or lien upon certain real property situated in the county of....., in said state of Wisconsin, described as follows [*insert description of property*]; that the said claim or lien is of the following description [*here insert concise statement of the lien claimed*] and that there is now due on said lien the sum of.....dollars; that said defendant has or claims to have an interest in or lien upon the premises described, which interest or lien is subsequent to the lien of

said plaintiff, and that the relief demanded in this action consists partially in excluding the said defendant E.... F.... from all lien or interest in said premises, and that the said defendant E.... F.... is a proper party to this action.

**198. The same, in divorce.**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that this action is brought for the purpose of obtaining a divorce in one of the cases authorized by law.

**199. The same, defendant a domestic corporation without proper officers (Wis. Stats. 1913 sec. 2639 sub. 6 and sec. 2640).**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that the said defendant is a private corporation organized and existing under and by virtue of the laws of this state, and that the proper officers of said corporation upon whom service of the summons in this action as authorized by law is to be made do not exist [*or, cannot be found*] although diligent effort and inquiry has been made to find the said officers and to serve the summons in this action upon them.

**200. The same unknown defendants.**

[*Proceed as in Form 192 and between \* and \*\*\* insert*]: that the subject of this action is real [*or, personal*] property situated within this state, described as follows [*here insert description of property*] and that such persons who are unknown to the plaintiff and who are named in the title to this action as unknown defendants either have or claim to have some lien, actual or contingent, in said property, and that the relief demanded in this action consists either wholly or partially in excluding such defendant or defendants from any lien or interest therein.

**201. Affidavit of mailing (Wis. Stats. 1913 secs. 2642, 2821, 2822).**

[*Title of court and of cause.*]

[*Venue.*]

G.... H.... being first duly sworn says that he is [the principal clerk in the law office of Q.... Z....] the attorney for the plaintiff in the above entitled action, and that on



the....day of....., 19.., he deposited at the post-office at ....., in said county and left there to be carried a copy of the summons together with a copy of the complaint [*or*, notice of object of action] in the above entitled action, copies of which are hereto annexed, securely enclosed in an envelope, the postage duly prepaid, addressed to each of the defendants hereinafter named, respectively, at his post-office address, as stated below, that is to say: C.... D.... at....., state of.....; E.... F.... at....., state of....., one set of said copies of summons and complaint to each, without any direction to the postal officers upon the wrapper for the return thereof in case of non-delivery to the person addressed.

G.... H....

[*Jurat.*]

## 202. Affidavit of publication (Wisconsin).

[*Title.*]

[*Venue.*]

L.... M.... being first duly sworn says that he is the printer [*or*, foreman of the printer, *or*, publisher, *or*, principal clerk of the printer] of the [*name newspaper*], a newspaper published at....., in.....county, and state of.....

That the summons, of which a printed copy is hereto annexed, was published in said newspaper once in each week for six weeks, and the date of the first publication was the ....day of....., 19.., and the date of the last publication was the....day of....., 19..

L.... M....

[*Jurat.*]

## 203. Affidavit of service without the state (Wisconsin).

[*Title.*]

[*Venue.*]

N.... O.... being first duly sworn says that he is the deputy sheriff of the county of....., in the state of..... [*or; state occupation*], and that on the....day of....., 19.., at the city of....., county of.....and state of....., he personally served the summons and complaint [*or* notice, of object of action] in the above entitled action, of which a copy is hereto annexed, on the above named defendants, by delivering to and leaving with each of said defendants per-



sonally a true copy of said summons, and thereto annexed a copy of said complaint [*or, notice of object of action*]; and that he knew the persons and each of them so served to be the persons mentioned and described in said summons as defendants in the above entitled action; and that at the time of the said service he endorsed upon each copy of the summons so served and delivered to said defendants the date upon which the same was so served, and signed his name thereto [*if an officer add, and that to said signature he added his official title*].

N.... O....

[*Jurat.*]

**204. Affidavit for publication, defendant non-resident and not found (Minn. Gen. Stats. 1913 secs. 7737, 7738).**

[*Venue.*]

A.... B.... being duly sworn, deposes and says that he is the plaintiff [*or, the attorney of the plaintiff*] in the above entitled action; that a summons was duly issued therein and delivered to the sheriff of said county of..... for service. That said sheriff has made his return thereon that the defendant C.... D.... cannot be found within the said county of....., and that affiant believes that the defendant C.... D....\* is not a resident of the state of Minnesota, and cannot be found therein\*\* and that his place of residence is at the city of....., county of..... and state of.....; that affiant has deposited a copy of the summons in said action in the post-office in the...of....., in said county of..... and state of Minnesota, properly enclosed in an envelope with the postage prepaid thereon, and directed to the said defendant C.... D.... at his said place of residence \*\*\*; that the defendant C.... D.... has property within this state, to-wit [*describe the property*] and that this court has jurisdiction of the subject of this action;

*Or:* that this action is brought by the plaintiff to obtain a divorce in one of the cases prescribed by law;

*Or:* that the subject of this action is real [*or, personal*] property in this state [*describe the same*] and that the defendant C.... D.... has or claims a lien or interest, actual or contingent, therein, and the relief demanded consists

wholly or partially in excluding the said defendant C.... D.... from any interest or lien therein;

*Or:* that this action is brought to foreclose a certain mortgage upon real estate in the county of..... in this state, executed by [*describe mortgage and place of record*] [*or, to foreclose a certain mechanic's lien upon real estate in the county of....., in this state*] [*describe lien and property covered thereby*], and the defendant C.... D.... is a necessary [*or, proper*] party to said action.

A.... B....

[*Jurat.*]

**205. The same, residence of defendant unknown (Minnesota).**

[*Proceed as in Form 204 and substitute between \*\* and \*\*\**]: that the place of residence of said defendant C.... D.... is not known to the affiant, although he has made diligent effort to ascertain the same.

**206. The same, defendant foreign corporation (Minnesota).**

[*Proceed as in Form 204, but substitute between \*\* and \*\*\**]: and that defendant C.... D.... is a foreign corporation organized and existing under the laws of the state of....., with its office and place of business in the city of....., in the said state of....., which is its place of residence, and that affiant has deposited a copy of the summons in this action in the post-office in the... of....., in said county of.....and state of Minnesota, properly enclosed in an envelope with the postage thereon prepaid, and directed to the said defendant corporation at its said residence, to-wit, the city of.....in the said state of.....; that said defendant has property within the state, to-wit: [*insert description of property*].

**207. The same defendant absconding or concealing himself (Minnesota).**

[*Proceed as in Form 204, but substitute between \* and \*\*\**]: is a resident of this state, but has departed therefrom with intent to defraud his creditors, [*or, to avoid the service of a summons, or, keeps himself concealed within this state with*

intent to defraud his creditors, *or*, to avoid the service of a summons] and that his present place of residence is unknown to and cannot be ascertained by defendant [*or, if his residence be known, state where it is and that a copy of the summons has been deposited in the post-office, addressed to such place of residence, as in preceding forms*].

**208. Affidavit for service by publication (Iowa Code 1897 sec. 3534).**

[*Title.*]

[*Venue*]

A.... B.... being duly sworn says he is the plaintiff [*or, attorney for the plaintiff*] in the above entitled action, that C.... D.... the defendant in this action is a non-resident of the state of Iowa and that personal service of the original notice in this action cannot be made upon the said defendant C.... D.... within this state, although due and diligent effort to make such service has been made.

A.... B....

[*Jurat.*]

**209. Affidavit for publication of summons (South Dakota; S. Dak. C. C. P. 1908 sec. 112).**

[*Title.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff [*or, attorney for the plaintiff*] in this action; that the above named defendant C.... D.... cannot be found within this state, although the plaintiff has made due and diligent effort to find said defendant [*here set forth the efforts used, as*] by repeatedly visiting the various places which said defendant was accustomed to frequent and particularly [*specifying times and places*]; that on numerous occasions, and particularly [*state times*], deponent called at the said defendant's residence [*or, lodgings*] but was unable to find said defendant and was told by the person in charge of said residence [*to-wit: his wife, or, son*] that defendant was not at home, and that it was not known when he would be at home [*or otherwise state the efforts used to find the defendant, so that the court or officer may see that due diligence has been used*]<sup>10</sup>; that the summons in this action was placed in the hands of the sheriff of said county

for service, but was returned by the said sheriff with his endorsement thereon; that said defendant, after due diligence, could not be found within the state of South Dakota; that a cause of action exists in favor of the plaintiff against said defendant C.... D.... for the purpose of foreclosing a mortgage upon certain real property within this state [*describing the same*] [*or, for the purpose of obtaining a divorce in one of the cases authorized by law, or otherwise state briefly the cause of action*], as more fully appears from the complaint herein, a copy of which is hereto attached and made a part of this affidavit.

*Or:* That this action relates to real property within this state, to-wit: [*describe the same*] and is brought for the purpose of [*here state briefly the object of the action*] and that the defendant C.... D.... is a proper party to said action, as more fully appears in the complaint of the plaintiff, a copy of which is hereto attached and made a part of this affidavit.

That the affiant is informed and believes that the said defendant C.... D.... resides at...., in .... [*or, that the place of residence of said C.... D.... is neither known to the plaintiff nor can with reasonable diligence be ascertained by him*];

That the defendant C.... D.... is a foreign corporation organized and existing under the laws of the state of.... and has property within this state; [*or, that the said cause of action arose in this state; or, that the defendant C.... D.... is a resident of this state and has departed therefrom with intent to defraud his creditors, or, to avoid the service of summons, or, keeps himself concealed within this state with intent to defraud his creditors, or, to avoid the service of a summons, or, that the defendant C.... D.... is not a resident of this state, but has property therein, and this court has jurisdiction of the subject of the action; or, that the subject of this action is real (or, personal) property in this state and the defendant C.... D.... has or claims a lien or interest, actual or contingent, therein, or, the relief demanded*

<sup>10</sup> An affidavit which simply states that the defendant cannot after due diligence be found within the state is insufficient, because it states a conclusion and not a fact. The facts showing what effort has been

made to find the defendant must be stated in the affidavit in order that the court may determine whether proper diligence has been used. Bothellis Hoellworth 10 S. Dak. 491; 74 N. W. 231.

herein consists wholly or partly, in excluding the defendant C.... D.... from any interest or lien therein.]

E.... F....,

[*Jurat.*]

Circuit Judge.

**210. Supporting affidavit by sheriff (S. Dak. C. C. P. 1908 sec. 112).**

[*Title.*]

[*Venue.*]

J.... K.... being duly sworn says that he is the sheriff of the county of....., in the state of South Dakota; that on the....day of....., 19.., deponent received from the plaintiff's attorney a summons in this action for service upon the defendants therein named; that deponent has made due and diligent effort to serve the same upon the defendant C.... D.... by frequently endeavoring to find the said defendant and by visiting the various places which the said defendant was accustomed to frequent, and particularly [*here specify places and time*]; that on numerous occasions after receiving said summons, and particularly on the.... day of....., 19.. [*specify other times, if any*], deponent called at the defendant's residence [*or, lodgings*] but was unable to find the defendant and was informed by the person in charge, to-wit: [the defendant's wife, *or*, his son] that it was not known when the defendant would be at home, and that deponent has been unable by diligent inquiry to ascertain when said defendant would be at home.

[*Or, where defendant has absconded or is concealed*]: That deponent has been unable to ascertain the present whereabouts of the defendant C.... D...., although he has made diligent inquiry therefor of the wife and family of the defendant at his residence, to-wit, on the....day of....., 19.., [*and name other occasions, if any*], and of L.... M...., in whose employ the defendant C.... D.... was when last seen, and deponent believes from his said inquiries so made that the said C.... D.... has either absconded from this state or is keeping himself concealed therein for the purpose of avoiding service of the summons in this action.

J.... K....

[*Jurat.*]



**211. Order of publication (S. Dak. C. C. P. 1908 sec. 112).**

[*Title.*]

If satisfactorily appearing, by the annexed affidavits of A.... B.... and E.... F.... that the defendant C.... D.... cannot after due diligence be found within this state, and that a cause of action exists in favor of said plaintiff against said defendant C.... D.... [for the purpose of foreclosing a mortgage upon certain real property within this state, as described in said affidavit ] *or*, for the purpose of obtaining a divorce in one of the cases authorized by law, *or otherwise state briefly the cause of action*] as more fully appears from the complaint herein, a copy of which is hereto attached;

*Or*: that this action relates to real property within this state, to-wit, [*describe the same*] and is brought for the purpose of [*here state briefly the object of the action*] and that the defendant C.... D.... is a proper party to said action, as more fully appears in the complaint of the plaintiff, a copy of which is hereto attached, and that the defendant C.... D.... is a foreign corporation organized and existing under the laws of the state of....., and has property within this state; *or*, that the said cause of action arose in this state; *or*, that the defendant C.... D.... is a resident of this state and has departed therefrom with intent to defraud his creditors, *or*, to avoid the service of summons, *or*, keeps himself concealed within this state with intent to defraud his creditors, *or*, to avoid the service of a summons; *or*, that the defendant C.... D.... is not a resident of this state but has property therein and this court has jurisdiction of the subject of the action, *or*, that the subject of this action is real (*or*, personal) property in this state and the defendant C.... D.... has or claims a lien or interest, actual or contingent, therein, *or*, that the relief demanded herein consists wholly or partly in excluding the defendant C.... D.... from any interest or lien therein];

And it further appearing that the place of residence of the said defendant C.... D.... is at the city of....., state of..... [*or*, that the residence of said C.... D.... is neither known to said plaintiff nor can with reasonable diligence be ascertained by him];

On motion of G.... H...., attorney for the said plaintiff,



ORDERED that service be made upon said defendant C.... D.... by the publication of the summons, of which a copy is hereto attached, in the X....Y....Z...., a newspaper printed and published in....., the same being hereby designated as most likely to give notice to said defendant, once a week for... successive weeks.

And further ordered and directed that a copy of the summons and complaint be forthwith deposited in the post-office, securely enclosed and directed to the said defendant C.... D.... at his place of residence, and postage thereon paid [*this clause to be omitted in case the defendant's residence is unknown*].

Dated....., 19..

N.... O...., Circuit Judge.

**212. Affidavit for publication against unknown defendants, in foreclosure (S. Dak. C. C. P. 1908 sec. 112).**

[*Title of court and of cause.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff [*or, the attorney for the plaintiff*] in this action; that this action is brought for the purpose of foreclosing a certain mortgage upon real estate within this state, described as follows; [*describe the same*] as more fully appears from the complaint herein, a copy of which is hereto attached and made a part of this affidavit; that certain persons, who are described in the title to this action as unknown claimants, have some interest in or lien upon the said mortgaged premises, which interest or lien is subject to the plaintiff's said mortgage thereon, the said unknown claimants being the heirs at law of one E.... F...., who purchased the said premises and took title thereto subject to the plaintiff's mortgage [*or otherwise state generally what relation the unknown defendants bear to the litigation*]; that the names and residences of said unknown claimants are unknown to the plaintiff and cannot with reasonable diligence be ascertained by him, although deponent has made diligent effort to ascertain the same.

WHEREFORE the deponent prays for an order that the summons herein be served by publication on such unknown claimants.

[*Jurat.*]

A.... B....

**213. Order for publication against unknown defendants in foreclosure (S. Dak. C. C. P. 1908 sec. 112).**

[*Title of court and of cause.*]

It satisfactorily appearing, by the affidavit of A....B.... hereto annexed, that this action is brought for the purpose of foreclosing a mortgage upon certain real estate within this state, described in said affidavit, and that certain persons named in the title hereto as unknown claimants have some interest in or lien upon the said mortgaged premises, and that the said persons are unknown to the plaintiff, and that the plaintiff cannot with reasonable diligence ascertain the residence of said persons or either of them; on motion of G.... H...., attorney for the said plaintiff,

IT IS ORDERED that service be made upon the said unknown claimants by publication of the summons herein in the X....Y....Z...., a newspaper printed and published in....., once a week for....successive weeks.

Dated....., 19..

I....K....  
Circuit Judge.

**214. Affidavit for publication (Nebraska; R. S. 1913 sec. 7641).**

[*Title as in Form 6.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is the plaintiff [*or, the attorney for the plaintiff*] in the above entitled action; that th's action is one of those mentioned in section seventy-seven (77) of the Code of Civil Procedure of this state; that on the ...day of....., 19.., the plaintiff filed in said court a petition against the defendants above named, and that the object of this action is to recover posesion of certain real property in this state described as follows [*insert description*] [*or, to obtain partition of certain real property in this state, describing same, or, to foreclose a certain mortgage upon real property within this state, describing same, and obtain sale thereof, or otherwise briefly state the object of the action, so as to show it is one of the actions named in section 77 of Code of Civil Procedure, i. e. sec. 7640, Neb. R. S. 1913*]. as more particularly set forth in said petition on file. That the defendant C.... D.... is a non-

resident of this state and that his residence is at..... in the state of..... [or, and that his residence is unknown to the plaintiff as well as to this affiant] [or, is a foreign corporation organized and existing under the laws of the state of....] and has property in this state [or, debts owing to him within this state] which property [or, debts] are sought to be appropriated in this action by attachment [or, garnishment, or other provisional remedy];

*Or:* That the defendant C.... D.... is a non-resident of this state, and that his residence is at..... in the state of..... [or, and that his residence is unknown to the plaintiff as well as to this affiant].

*Or:* is a foreign corporation organized and existing under the laws of the state of.....] and claims the title to or some lien or other interest against or in said property, and the relief demanded in the above entitled action consists, wholly or partially, in excluding said defendant C.... D.... from any interest therein;

*Or:* That the defendant C.... D.... is a resident of the county of..... in this state, and has departed from this state [or, from said county of.....] with intent to delay and defraud his creditors [or, to avoid the service of a summons herein], or, keeps himself concealed within this state with intent to delay and defraud his creditors, or, to avoid the service of the summons herein.

Affiant further says that service of summons cannot be made on said defendant within this state, and that this affidavit is made for the purpose of procuring service on said defendant by publication.

A.... B....

[*Jurat.*]

## 215. Notice to be published, defendant not found (Nebraska).

[*Title of court and of cause.*]

To the above named defendant C.... D...., a non-resident [or, a foreign corporation, or, not found]:

You are hereby notified that on the...day of....., 19.., A.... B...., the plaintiff herein, filed his petition in this action in the district court of.....county, Nebraska, against the above named defendants, the object and prayer

of which is to foreclose a certain mortgage executed on the . . . .day of . . . . ., 19.., by one L. . . .M. . . . upon certain real estate described as follows [*insert description*] to secure payment of the sum of . . . . .dollars, with interest at, &c., upon which mortgage there is now due the sum of . . . . .dollars with interest, &c., for which sum plaintiff prays for a decree that the defendant pay the same, and that in default of such payment said premises may be sold to satisfy the amount found due [*or otherwise state intelligibly and concisely the object and prayer of the petition*].

You are required to answer said petition on or before the . . . .day of . . . . ., 19..

Dated at . . . . ., Nebraska, . . . . ., 19..

A. . . . B. . . ., Plaintiff,

By K. . . . M. . . ., Attorney for Plaintiff.

**216. Affidavit for publication, unknown heirs (Nebraska; R. S. 1913 sec. 7647).**

[*Title of court and of cause.*]

[*Venue.*]

A. . . . B. . . . being first duly sworn says he is the plaintiff [*or, the attorney for the plaintiff*] in the above entitled action; that said action has been brought for the purpose of [*here state the purpose of the action, as for the foreclosure of a certain mortgage or otherwise*] as more fully appears from the petition in said action, which is annexed to this affidavit; that it is necessary in order that the plaintiff may obtain the relief demanded in the said petition that the heirs [*or, devisees*] of one C. . . . D. . . ., now deceased, should be made parties defendant to the said action, and that the names of said heirs [*or, devisees*] and their respective residences are unknown to the plaintiff and cannot be ascertained by him, although he has made diligent effort to ascertain the same.

A. . . . B. . . .

[*Jurat.*]

**217. Order of publication on unknown heirs (Nebraska; R. S. 1913 sec. 7647).**

[*Title of court and of cause.*]

It satisfactorily appearing to the court, by the affidavit of A. . . . B. . . ., annexed to the petition, in this action, and by

the said petition, that it is necessary in this action that the heirs [or, devisees] of one C.... D...., now deceased, should be made defendants therein, and that the names of the said heirs [or, devisees] and their respective residences are unknown to the plaintiff and cannot be ascertained by him; now therefore, upon motion of E.... F...., plaintiff's attorney.

IT IS ORDERED that service be made upon the said unknown heirs of C.... D.... by the publication of the notice hereto attached, for a period of four consecutive weeks in the X....Y....Z...., a newspaper printed in the county of....., state of Nebraska.

Dated....., 19..

G.... H....  
District Judge.

**218. Notice to be published, unknown heirs (Nebraska; R. S. 1913 sec. 7647).**

*[This notice may be made to correspond to the last preceding notice, except that in enumerating parties defendant in the caption there should be added as defendants: the unknown heirs (or, devisees) of C.... D...., deceased; and the notice should be directed: to the unknown heirs (or, devisees) of C.... D...., a deceased person].*

**219. Affidavit for publication of summons (Cal. C. C. P. 1906 sec. 412).**

*[Title of court and of cause.]*

*[Venue.]*

A.... B...., being duly sworn, says that he is the plaintiff in the above entitled action, that the complaint in said action was filed with the clerk of this court on the.... day of....., 19.., and that the summons was thereupon issued and placed in the hands of the sheriff of.....county with instructions to serve the same upon the defendant, but that the said sheriff has returned the said summons of the clerk of this court with his return endorsed thereon stating that said defendant could not be found in his county [or otherwise state the sheriff's return according to the facts].

That the defendant C.... D.... last resided in the city of.....and county of....., but has departed from this state and now resides at.....in the state of..... [or, that



the last known residence of said defendant was at . . . . . in this state and that he removed therefrom on or about the . . . .day of . . . . ., 19. . ., and that this affiant can not with due diligence ascertain his present place of residence. That affiant has diligently inquired of the former neighbors and friends of the said . . . . .and of his wife [*or otherwise state what inquiries were made according to the fact*] and affiant is informed by them that they do not know the present residence of the defendant but that as they believe he is now within the state.

That there has not been filed in the office of the county recorder of said county of . . . . .any certificate of residence by or on behalf of the defendant, as provided in section 1163 of the Civil Code of the State of California.

That this action is brought for the purpose of [*state fully the purpose of the action*] and that affiant has fully and fairly stated the facts of the case. o E. . . . F. . . . , Esq., of No. . . . . Street in the city of . . . . ., his counsel, and is informed by his said counsel upon such statement so made and verily believes that he has a good cause of action against the said defendant, as more fully appears by his verified complaint aforesaid to which reference is made, and that the said defendant C. . . . D. . . . is a necessary and proper party defendant thereto.

That personal service of said summons cannot be made on said defendant and affiant therefore demands that an order be made authorizing service of said summons on the said C. . . . D. . . . by publication.

A. . . . B. . . . :

[*Jurat.*]

## 220. Order for publication of summons (California).

[*Title of court and of cause.*]

On reading and filing the affidavit of A. . . . B. . . . , from which it satisfactorily appears to me that the defendant C. . . . D. . . . resides out of this state and can not after due diligence be found therein [*or, has departed from this state and can not after due diligence be found therein; or, conceal himself to avoid the service of summons, as the case may be*] and it appearing to me from said affidavit that a cause of action exists in favor of the plaintiff and against said de-

defendant C.... D...., and that said defendant is a necessary and proper party thereto, and further that a summons has been duly issued out of the said court in this action and that personal service thereof can not be made upon the said defendant.

On motion of E.... F.... Esq., attorney for the plaintiff

IT IS ORDERED that service of said summons be made on the defendant C.... D.... by publication thereof in the ....., a newspaper published at....., which is hereby designated as the paper most likely to give notice to said defendant, and that such publication be made at least once a week for two months.

And it further appearing to me from said affidavit that the residence of said C.... D.... is known to be at the city of ....., county of ....., state of ....., it is further ordered that a copy of the summons and of the complaint herein be forthwith deposited in the post-office at....., postage thereon prepaid, directed to the said defendant at his said place of residence.

[Date.]

J.... K....

Judge Superior Court, etc.

## 221. Affidavit of publication (California).

[Title of court and of cause.]

[Venue.]

A.... B...., being duly sworn, deposes and says that he is a citizen of the United States and is now and was at the dates hereinafter mentioned over eighteen years of age and is not a party to this action. That he is principal clerk and bookkeeper in the office of the....., a newspaper printed and published in the city of....., county aforesaid [or, printer, or, foreman].

That the summons of which the annexed printed copy is a true copy was published in said newspaper once each week for... months, commencing on the... day of ....., 19.., and ending on the... day of ....., 19..

A.... B....

[Jurat.]

**222. Affidavit of mailing (California).**

[*Title of court and of cause.*]

[*Venue.*]

A.... B...., being duly sworn, deposes and says that he is and at the times hereinafter mentioned was a citizen of the United States over eighteen years of age, a resident of said county of....., and that he is not a party to the above entitled action.

That on the....day of....., 19.., the complaint in said action was duly filed and on the....day of....., 19.., an order was duly made for the publication of the summons herein and also ordering that a copy of said summons and said complaint be forthwith deposited in the post-office at ....., directed to the defendant C.... D...., at his place of residence, to-wit: the city of....., county of....., state of.....; that in pursuance to said order this affiant on the ....day of....., 19.., deposited in the post-office at said city of..... a copy of said summons, together with the copy of said complaint attached thereto and directed to the said C.... D...., at the city of....., county of....., state of....., and that affiant prepaid the postage thereon.

A.... B....

[*Jurat.*]

**223. Order for publication of summons (Colo. Stats. Ann. 1911 sec. 45).**

[*Title.*]

It appearing satisfactorily by the affidavit of A.... B.... filed in the above entitled action that a summons has been duly issued in said action and return thereon made not less than ten days after the issue thereof, that the defendant C.... D.... after diligent search cannot be found, and that defendant resides out of this state [*or, has departed from this state without intention of returning, or conceals himself to avoid the service of process*] and further that personal service of said summons cannot be made upon the aforesaid defendant C.... D....

IT IS ORDERED that service of the summons in this action be made upon the defendant C.... D.... by publication thereof in [*name newspaper*] a public newspaper published at....., in the county of....., and state of Colo-

rado, that such publication be made at least once a week for four successive weeks; and it further in like manner satisfactorily appearing that the post-office address of said defendant is [state address] it is hereby ordered and directed that a copy of the summons in this suit be forthwith deposited in the post-office, inclosed in an envelope with postage prepaid thereon and addressed to said defendant C.... D...., at....., aforesaid, his post-office address.

[SEAL]

WITNESS L.... M...., clerk,  
and the seal of the.....court  
of.....county, at....., Colo-  
rado, this .... day of.....,  
19..

L.... M...., Clerk  
By N.... O.... Deputy

224. Affidavit of mailing (Colo. Stats. Ann. 1911 sec. 45).

[Title.]

[Venue.]

A.... B...., being first duly sworn, on oath deposes and says that he was at the dates hereinafter mentioned and still is the clerk of the.....court of.....county, in the state aforesaid, that on the.... day of....., A. D. 19.., he mailed to C.... D...., the defendant in the above entitled action, a true and correct copy of the original summons, issued in the above entitled action, on the....day of....., 19.., directed to said C.... D...., by enclosing said copy of summons in an envelope addressed to said C.... D...., at....., state of....., and depositing said copy of summons enclosed in the envelope so addressed, in the United States post-office in.....county of....., and state of Colorado; that said envelope, containing said copy of summons with copy of complaint thereto attached, had sufficient postage prepaid thereon to carry it through the United States mails to its destination; that the said C.... D...., to whom the said copy of summons and envelope were directed, is the defendant upon whom service of the summons by publication was ordered by said county court on the....day of....., A. D. 19..

A.... B....

[Jurat.]

**225. Affidavit for publication in vacation (form No. 128, Mo. R. S. 1909 p. 3759).**

[Title.]

[Venue.]

This affiant says that C.... D...., the defendant in the above entitled cause, is a non-resident of this state, or has absconded from his usual place of abode in this state [*or some other cause that will authorize a publication*], so that the ordinary process of law cannot be served upon him.

G.... H....

Subscribed and sworn to before me, this....day of....., 19..

L.... M.... Clerk.

**226. Order of publication in term time (form No. 127, Mo. R. S. 1909 p. 3759).**

[Title.]

NOW at this day comes the plaintiff, by his attorney, and it appearing, to the satisfaction of the court, that the defendant, C.... D...., cannot be summoned in this action,

IT IS ORDERED by the court that publication be made, notifying him that an action has been commenced against him, by petition and attachment, in the circuit court of .....county, in the state of Missouri, founded on a note [*or, account, or other cause of action, as the case may be*], for the sum of.....dollars and....cents; that his property has been attached; and unless he be and appear at the next term of this court, to be holden at the courthouse in ....., in the county of.....on the....day of....., 19.., and on or before the third day thereof, (if the term shall so long continue, and if not, then before the end of the term) judgment will be rendered against him, and his property sold to satisfy the same.

It is further ordered that a copy hereof be published in the....., a newspaper published in the county of....., for four weeks successively, the last insertion to be at least fifteen days before the commencement of the next term of this court.

A true copy.

Attest: L.... M.... Clerk.



**227. Order of publication by the clerk in vacation (form No. 129, Mo. R. S. 1909 p. 3760).**

[*Title.*]

NOW at this day comes A.... B...., the plaintiff in the above entitled cause, before the undersigned, clerk of the circuit court of.....county, in vacation, and files his petition and affidavit, stating, among other things, that the above named defendant, C.... D...., is a non-resident of this state [*or whatever cause is stated in the affidavit to authorize a publication*]. It is thereupon

ORDERED by the clerk aforesaid, in vacation, that publication be made notifying him that an action has been commenced against him, by petition and attachment, in the circuit court of.....county, in the state of Missouri, founded on a note [*or account, or other cause of action, as the case may require*], for the sum of.....dollars and ....cents; that his property is about to be attached, and that unless he be and appear at the next term of said court, to be holden at the courthouse in....., within the county of ....., on the....day of....., 19.., and on or before the third day thereof (if the term shall so long continue, and if not, then before the end of the term), judgment will be rendered against him, and his property sold to satisfy the same.

It is further ordered that a copy hereof be published in the....., a newspaper published in said county of....., for four weeks successively, the last insertion to be at least fifteen days before the commencement of the next term of said court.

A true copy.

Attest:

L.... M...., Clerk.

**228. The same in foreclosure (Mo. R. S. 1909 sec. 1770).**

[*Title.*]

[*Venue.*]

NOW at this day comes the plaintiff..herein, by L.... M.... his attorney and files his petition and affidavit, alleging, among other things, that defendant C.... D.... is not a resident of the state of Missouri, so that the ordinary process of law can not be served upon him within this state,

[or otherwise state the reason why service can not be made according to the fact].

WHEREUPON, IT IS ORDERED by the undersigned clerk of the court that said defendant be notified by publication that plaintiff has commenced a suit against him in this court, the object and general nature of which is to foreclose a mortgage upon certain real estate in said county described as follows [*insert description*] [or otherwise state the object of the action according to the fact and so as to bring it within one of the classes in which service by publication may be made as prescribed in sec. 1770 Mo. R. S. 1909].

And it is further ordered, that unless the said C.... D.... be and appear at this court, at the next term thereof, to be begun and holden at the court house in the..... of..... in said county, on the....day of.....next, and on or before the first day of said term, unless further time be granted by the court, answer or demur to the petition in said cause, the same will be taken as confessed, and judgment will be rendered accordingly.

And it is further ordered, that a copy hereof be published, according to law, in the [name newspaper] a newspaper published in said county of..... for four weeks successively, published at least once a week, the last insertion to be at least fifteen days before the first day of said next....term of this court.

N.... O....., Circuit Clerk,  
By O.... P....., Deputy.

A true copy from the record.

WITNESS my hand, and seal of the circuit court of .....county, this....day of....., 19..

N.... O....., Circuit Clerk.

**229. Affidavit for publication (Mont. Rev. Codes 1907 sec. 6520).**

[Title.]

[Venue.]

A.... B.... being duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that the complaint in said action was filed with the clerk of above entitled court on the....day of....., 19.., and summons thereupon issued; that said action is brought for the pur-

pose of [state purpose of action showing that it is one of the actions named in sec. 6520].

That the defendant resides outside of this state to-wit at....., state of.....; [or that defendant last resided at ..... in this state but departed from this state on or about....., 19.., and has not since that time returned; or that the defendant cannot after due diligence be found within this state; or that the defendant conceals himself to avoid the service of the summons, or that the defendant is a foreign corporation having no managing or business agent, cashier, secretary or other officer within this state].

That plaintiff has a good cause of action against the said defendant C.... D.... and that said defendant is a necessary and proper [or proper *only if that be the fact*] party.. to the action, as appears by said verified complaint filed herein, to which reference is hereby made.

That the summons issued out of this court in said action, with directions to the sheriff of.....county, Montana, to serve the same upon said defendant.., has been returned by said sheriff, to the clerk of this court, with the return of said sheriff endorsed thereon, to the effect that the said defendant could not after due diligence be found in his said county.

WHEREFORE, affiant prays for an order that service of the summons in said action be made by publication.

A.... B....

[*Jurat.*]

### 230. Order for publication of summons (Mont. Rev. Codes 1907 sec. 6520).

[*Title.*]

Upon reading and filing the affidavit of A.... B.... and it satisfactorily appearing therefrom that the defendant C.... D.... resides outside of the state of Montana [or state the fact as it appears in the affidavit] and it appearing from the affidavit aforesaid that a good cause of action exists in this action in favor of the plaintiff.. therein and against the said defendant.. and that the said defendant C.... D.... is a necessary and proper party, defendant.. thereto; and it further appearing that a summons has been duly issued out of said court in this action, and that personal service of the same cannot be made upon the said defend-

ant . . , for the reason hereinbefore contained and by the said affidavit made to appear:

On motion of L . . . M . . . , attorney . . for the plaintiff

IT IS ORDERED that the service of the summons in this action be made upon the defendant . . by publication thereof in the [*name newspaper*] a newspaper published at . . . . . , in . . . . . county, Montana, which is hereby designated as the newspaper most likely to give notice to said defendant . . ; that such publication shall be published once a week for four successive weeks, and that said summons so published shall contain a general statement of the nature of this action.

And it appearing that the residence of said defendant is known to be at . . . . . , in the state of . . . . . , it is ordered and directed that a copy of the summons so directed to be published as aforesaid, and a copy of the complaint in this action be forthwith deposited in the United States post-office, at . . . . . , in . . . . . county, Montana, postpaid, directed to the said defendant, C . . . . D . . . . at his said place of residence.

Dated . . . . . A. D. 19 . .

M . . . . N . . . . , Clerk,

By N . . . . O . . . . , Deputy Clerk.

**231. Affidavit of mailing (Mont. Rev. Codes 1907 sec. 6520).**

[*Title.*]

[*Venue.*]

A . . . . B . . . . , being first duly sworn, deposes and says: That he was at the date hereinafter mentioned and still is the clerk of the district court of the . . . . . judicial district of the state of Montana, in and for the county of . . . . . ; that on the . . . . day of . . . . . , 19 . . he duly deposited in the United States post-office at . . . . . in . . . . . county, Montana, in an envelope securely sealed, with the postage prepaid, a copy of the summons and complaint in this action directed to C . . . . D . . . . , at . . . . . in the state of . . . . . , he being the defendant in the action named in said summons and complaint.

A . . . . B . . . .

[*Jurat.*]

**232. Affidavit for publication of summons (Okla. Comp. Laws 1909 sec. 5613).**

[*Title.*]

[*Venue.*]

A.... B.... being duly sworn according to law, says: That..he is the plaintiff [*or* the attorney for the plaintiff] in the above entitled action.

That on the.... day of....., 19.., a summons was issued in the above entitled cause against the above named defendant C.... D.... but that said plaintiff was unable with due diligence to make service of the same upon said defendant..within said state.

That the defendant C.... D.... is a non-resident.. of the state of Oklahoma, but resides at.....in the state of..... [*or*, that the defendant is a foreign corporation having property in this state which plaintiff is seeking in this action to have taken by attachment, *or*, that said defendant.. being...resident.. of this state has departed therefrom with intent to defraud his creditors, *or*, to avoid the service of summons].

Affiant further says, that this action is brought to establish a will [*or otherwise state the purpose of the action as the fact may be*], and that the plaintiff wishes to obtain service on said defendant by publication, and further affiant saith not.

A.... B....

[*Jurat.*]

**233. Affidavit for publication of summons (Wash. Rem. & Bal. Code 1910 sec. 228).**

[*Title.*]

[*Venue.*]

A.... B.... of lawful age being first duly sworn, says that he is the plaintiff [*or*, the agent, *or*, attorney of the plaintiff] above named; that C.... D.... the defendant.. above named cannot be found within the state of Washington; that a summons has been issued herein for said defendant.. and the sheriff of.....county has made his return thereon showing that the said defendant.. cannot be found in said county of.....; that affiant believes the said defendant.. is not a resident of the state of Washington and cannot be found therein, [*or if he be a resident omit the*



*statement of non-residence leaving simply the statement that he cannot be found*]; that affiant has deposited a copy of the summons and complaint in this action in the post-office at . . . . ., in the county of . . . . . and state of Washington, with postage fully prepaid, directed to . . . . . said defendant . . . at his place . . . of residence, to-wit: . . . . ., state of . . . . . [If the defendant's place of residence is not known omit the allegation of the deposit of the summons and complaint in the post-office and insert instead; that the place . . . of residence, post-office . . . and present whereabouts of the said defendant . . . C . . . . D . . . . is unknown to affiant, although he has made diligent inquiry to ascertain the same].

That this action is an action to foreclose a mortgage upon real estate in the said county of . . . . ., state of Washington [or otherwise state the cause of action showing it to be one of the causes of action in which service by publication may be had, named in section 228 Rem & Bal. Code 1910].

A . . . . B . . . .

[*Jurat.*]

## CHAPTER VIII.

### ARREST AND BAIL.

- |  |  |
|--|--|
| 234. Affidavit for arrest in an action for injury to person.   | taking, if without surety (to accompany last preceding form); Wis. |
| 235. Affidavit for order of arrest,—another form.  | 246. Order of arrest.  |
| 236. Affidavit for arrest in action to recover property obtained by false pretenses.   | 247. Undertaking to obtain discharge of defendant from arrest.     |
| 237. Affidavit for arrest in an action for conversion.   | 248. The same; Wash.   |
| 238. Affidavit for arrest in an action of embezzlement by an agent.  | 249. Notice of exception to bail.                                  |
| 239. Affidavit for arrest when debt was fraudulently contracted; North and South Dakota.   | 250. Undertaking to obtain discharge from arrest in replevin.      |
| 240. Affidavit for arrest where defendant has disposed of his property with intent to defraud his creditors; North and South Dakota. | 251. Sheriff's return of arrest.                                   |
| 241. Affidavit for arrest in an action where defendant is a non-resident, or is about to remove from the state; Wis. and S. Dak.     | 252. Sheriff's certificate of deposit in lieu of bail; Wis.        |
| 242. Affidavit for arrest in replevin, property concealed; Wis.  | 253. Clerk's certificate of deposit in lieu of bail; Wis.          |
| 243. Affidavit of sheriff to accompany above; Wis.   | 254. Affidavit on motion to vacate arrest.                         |
| 244. Undertaking for order of arrest; Wis.   | 255. Notice of motion to vacate arrest or reduce bail.             |
| 245. Plaintiff's affidavit to under-   | 256. Order vacating arrest.  |
|  | 257. Order reducing bail.  |
|  | 258. Notice of justification of bail.                              |
|  | 259. Justification of bail.  |
|  | 260. Allowance of bail.  |
|  | 261. Authority to arrest principal.                                |
|  | 262. Certificate of surrender.                                     |
|  | 263. Order exonerating bail.                                       |
|  | 264. Notice of motion for enlargement of time to surrender.        |
|  | 265. Affidavit in support of above motion.                         |

The provisional remedy by arrest in civil actions no longer exists in some of the states, and where it is still allowed it is generally confined to certain classes of tort actions or actions based on contracts induced by fraud, or actions in which it appears that the defendant is about to conceal himself or his property with intent to defraud his creditors. In the

states of Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Oklahoma and Texas no statutes have been found authorizing arrest in civil actions. In the remaining states intended to be covered by this work there are varying provisions which will be found stated in the footnote.<sup>1</sup>

<sup>1</sup>Arrest may be had: in Wisconsin (Stats. 1913 sec. 2689 and 2691), where it appears by affidavit that a sufficient cause of action exists: (1) In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for seduction, or for criminal conversation, or for injuring, or for wrongful taking, detaining or converting property, and in actions to recover damages for the value of property obtained by the defendant under false pretenses or false tokens; (2) In an action for fine or penalty, or for money received, or for property embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor or counsel, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker or any person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment; (3) In an action to recover possession of personal property unjustly detained where the property or any part thereof has been concealed, removed or disposed of so that it cannot be found or taken by the sheriff. But no female shall be arrested in any action except for a willful injury to person, character, or property.

In Arkansas, (Dig. of Stats. 1904 sec. 300), arrest may be had on an affidavit of the plaintiff, showing: *First*, the nature of the plaintiff's claim or debt, and charging the defendant with fraud in contracting the same; *Second*, that it is just; *Third*, the amount or value which the

affiant believes the plaintiff ought to recover; *Fourth*, that the affiant believes either that the defendant is about to depart from this state, and, with the intent to defraud his creditors, has concealed or removed from this state his property, or so much thereof that the process of the court, after judgment, can not be executed, or that the defendant has money or securities for money, or evidence of debt, in the possession of himself, or of others for his use, and is about to depart from this state without leaving property therein sufficient to satisfy the plaintiff's claim.

In California, (C. C. P. 1906 sec. 479 and 481), where affidavit states to the judge's satisfaction that a sufficient cause of action exists: (1) In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors; (2) In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty; (3) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the sheriff; (4) When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for

The facts authorizing the arrest are brought to the attention of the court by affidavit of the plaintiff or his attorney. The statutes usually require that before the making of the order of arrest an undertaking shall be filed protecting the defendant against all loss and damage which he may sustain by reason of the arrest, and further that the defendant after his arrest may give bail for his appearance and for the payment of any judgment rendered against him.

which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the actions is brought; (5) When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

In Idaho (Rev. Codes, 1908 sec. 4241 and 4243) where it appears by affidavit that a sufficient cause of action exists: (1) In an action for the recovery of money or damages on a cause of action arising upon a contract, express or implied, where the defendant is about to depart from the state with intent to defraud his creditors, or when the action is for willful injury to person, to character or to property, knowing the property to belong to another; (2) In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such or by any other person in a fiduciary capacity; or for misconduct or neglect in office or in a professional employment or for a willful violation of duty. (Remainder same as in California, par. 3, 4 and 5.)

In Kansas (Gen. Stats. 1909 sec. 5741) where the affidavit states the nature of the plaintiff's claim, that it is just, the amount thereof as nearly as may be and shows one or more of the particulars following, and also a statement of the facts claimed to justify the belief in the

existence of one or more of the following particulars: (1) That the defendant has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to defraud his creditors; (2) That he has begun to convert his property or a part thereof into money, for the purpose of placing it beyond the reach of his creditors; (3) That he has property or rights of action which he fraudulently conceals; (4) That he has assigned, removed or disposed of, or has begun to dispose of his property or part thereof, with intent to defraud his creditors; (5) That he fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought.

In Montana, (Rev. Codes, 1907 sec. 6596 and 6598), Paragraph (1) same as in Idaho; remainder same as in California, par. 2, 3, 4 and 5.

In North Dakota, (Rev. Codes, 1905 sec. 6890 and 6892), where by affidavit it appears that a sufficient cause of action exists: (1) In an action for the recovery of damages for an injury to person, or character, or for injuring or for wrongfully taking, detaining, or converting property; (2) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or other person in a fiduciary capacity, in the course of his employment as such; (3) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed,

As the depriving of a person of his liberty, even for a short period, is a very serious thing and entails heavy responsibility if it be not justified by law, it will readily be perceived by any practitioner that the affidavits on which the order is based should very fully cover the requirements of the law. Every fact made necessary by the particular statute in order

removed or disposed of, so that it cannot be found or taken by the sheriff and with the intent that it should not be taken, or with the intent to deprive the plaintiff of the benefit thereof; (4) When the defendant has been guilty of a fraud in contracting the debt, or in incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit; (5) When the defendant has removed or disposed of his property or is about to do so with the intent to defraud his creditors. But no female shall be arrested in any action except for willful injury to person, character or property.

In South Dakota, (C. C. P. 1908 sec. 157 and 159), where by affidavit it appears that a sufficient cause of action exists: (1) In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining, or converting property; (2) In an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor, or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in

office, or in a professional employment. (Remainder same as in North Dakota par. 3, 4 and 5.)

In Oregon, (Laws 1910 sec. 259 and 260), whenever it shall appear from plaintiff's affidavit that he has a sufficient cause of action: (1) In an action for the recovery of money or damages on a cause of action arising out of contract, when the defendant is not a resident of the state, or is about to remove therefrom, or when the action is for an injury to person or character, or for injuring, or wrongfully taking, detaining, or converting property; (2) In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment. (Remainder same as in North Dakota, par. 3, 4 and 5, and last paragraph.)

In Utah, (Comp. Laws, 1907 sec. 3010), no person shall be arrested in a civil action except an absconding debtor.

In Washington, (Rem. and Bal. Code, 1910 sec. 749 and 750), when it appears by affidavit that a cause of action exists: (1) (Same as South Dakota, par. 1); (2) (3) and (4) (Same as Oregon, sec. 259 par. 2, 3 and 4); (5) When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; (6) When the action is to prevent threatened injury to



to justify the issuance of the order should be plainly and unequivocally set forth in the affidavits. The requirements are so various that it has not been thought desirable to attempt to prepare a separate form for each state, but it is believed that the forms given can with slight changes be adapted to use in all the states.

### 234. Affidavit for arrest in an action for injury to person.<sup>2</sup>

[*Title of court and of cause.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff above named [*or, the attorney for the plaintiff and makes this affidavit on his behalf*]; that on the .... day of ....., 19... \* at the city of ....., in said county, C.... D...., the

or destruction of property, in which the party bringing the action has some right, interest, or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed or its value impaired, to the injury of the plaintiff; (7) On the final judgment or order of any court in this state, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, which he refuses to apply, with intent to defraud the plaintiff, or when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or when any one or more of the causes exist for which an arrest is allowed in the first class of cases mentioned in this section.

In Wyoming, (Wyo. Comp. Stats. 1910 sec. 4818), when there is filed an affidavit of the plaintiff, his authorized agent or attorney, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars: (First five subsections same as Kansas); (6) That the

money, or other valuable thing, for which a recovery is sought in the action, was lost by playing any game, or by means of a bet or wager.

<sup>2</sup> If the statements of fact in this affidavit be not upon knowledge, but upon information and belief, the affidavit must set forth the facts upon which the information and belief are founded. N. Dak. Rev. Codes 1905 sec. 6892; S. Dak. Rev. C. C. P. 1908 sec. 159. The same rule applies in the absence of statute, for the very plain reason that a court or judge will rarely grant so drastic a remedy as an arrest of the person based merely upon allegations upon information and belief. The practitioner should also remember that the affidavit will be insufficient if it contain conclusions of law only instead of statements of fact. Thus, it would be unsafe to allege in the affidavit that a debt was fraudulently contracted for this would be a conclusion of law only; the facts constituting the fraud must be specifically stated, and if they are stated upon information and belief the facts upon which that information and belief are founded should also be stated. This is expressly required by the Wyoming statute, (Wyo. Comp. Stats. 1910 sec. 4818).

defendant above named, did wilfully make an assault upon, beat, wound, and injure the plaintiff, without cause, whereby the plaintiff has suffered great pain of body and mind, being for three weeks disabled from attending his labors, and incurred great expense for care and medical attendance; and by reason thereof said plaintiff has a cause of action against said C.... D.... to recover damages in at least the sum of .....dollars; \*\* that said plaintiff is about to commence action therefor; and that he desires and hereby demands an order of arrest of said C.... D.... in said action.

A.... B....

[*Jurat.*]

### 235. Affidavit for order of arrest, another form.\*

[*Title of court and of cause.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff above named [*or, the attorney for the plaintiff above named and makes this affidavit in his behalf*]; that a cause of action exists in favor of the plaintiff against the said defendant, as appears from the verified complaint in this action, the allegations of which complaint are true and a true copy of which complaint is attached hereto and made part of this affidavit; that on the ....day of ....., 19.., at .....the defendant [*here state the facts and circumstances bringing the case within the statute authorizing arrest in civil actions, as in the last preceding form or the immediately succeeding forms and close with a demand for the issuance of an order of arrest*].

A.... B....

[*Jurat.*]

### 236. Affidavit for arrest in action to recover property obtained by false pretenses.

[*Proceed as in Form 234, and insert between \* and \*\**]; at ....., in said county, the defendant C.... D...., devising and intending to cheat and defraud plaintiff of his goods,

\*It has been held that a verified complaint may serve as an affidavit in aid of the statutory affidavit. *Palmer vs. Huesey* 59, N. Y. 647. In such case a copy of the complaint should be attached to and served

with the main affidavit, and it should be stated in the main affidavit that the allegations of the complaint are true. *Ex parte Horwitz* 2 Cal. app. 752, 84 Pac. 229. The practice is not recommended.

money and property, did knowingly and falsely pretend to plaintiff that a certain written paper then and there produced by him, said defendant, and offered to plaintiff and given to him in payment for a certain horse before then agreed to be sold by the affiant to said defendant, was a good and valid promissory note for the payment of one hundred and fifty dollars, on the . . . .day of . . . . ., 19. . ., and that the person purporting to be the maker thereof and responsible therefor, was in fact the maker thereof and responsible therefor, whereas in truth and in fact the said note was not a good and valid promissory note for the sum aforesaid, nor for any sum whatever, and the person purporting to be the maker thereof, to-wit, C. . . . D. . . ., was not the maker thereof, but the said note was forged and counterfeit, and all this the said defendant well knew; by means of which said false pretenses he, the said defendant, did then and there unlawfully and designedly obtain from the plaintiff one horse of the value of two hundred dollars, the property of the plaintiff, and with intent to defraud the affiant.

**237. Affidavit for arrest in an action for conversion.**

[*Proceed as in Form 234, and insert between \* and \*\**]: at . . . . ., in said county, the defendant, C. . . . D. . . ., unlawfully and wrongfully took the following described property of plaintiff, to-wit [*describe the property*], and wrongfully converted the same to his own use, to the damage of this affiant . . . . .dollars, the value of said property; by reason whereof plaintiff has a cause of action against said defendant to recover said sum as damages.

**238. Affidavit for arrest in an action of embezzlement by an agent.**

[*Proceed as in Form 234, inserting between \* and \*\**]: the defendant, C. . . . D. . . ., was the agent of this plaintiff, appointed and employed to conduct and carry on a certain business, to-wit, [*describe the business*]; that as such agent, and in the course of his employment as such, said defendant received large amounts of personal property, to-wit, [*describe property and give value*] and also large sums of money, amounting as near as affiant is able to ascertain to over and above the sum of . . . . .dollars; and that on or about the

day aforesaid, and at other times prior to the commencement of this action the said defendant unlawfully and fraudulently misapplied, embezzled and unlawfully converted to his own use, the said property and money above described, to the damage of this affiant . . . . .dollars, for the recovery of which plaintiff has a cause of action against defendant.

**239. Affidavit for arrest when debt was fraudulently contracted (North and South Dakota).**

[*Proceed as in Form 234 inserting between \* and \*\**]: plaintiff sold and delivered to defendant, at his request, certain goods, wares and merchandise, of the value of . . . . .dollars; that prior to such sale and delivery, and for the purpose of inducing plaintiff to make the same, defendant falsely and fraudulently represented to plaintiff [*here state representations, as*] that he was solvent and able to meet all his debts and obligations, whereas in fact said defendant was at that time insolvent and unable to meet his obligations and knew himself to be insolvent; that plaintiff, relying on said representations and believing the same to be true, thereupon sold and delivered said goods, wares and merchandise to defendant, whereby the same were lost to the plaintiff and have never been paid for by defendant, and the plaintiff has suffered damage thereby in the sum of . . . . .dollars, for which he has a cause of action against said C. . . . D. . . .

**240. Affidavit for arrest where defendant has disposed of his property with intent to defraud his creditors (North and South Dakota).**

[*Proceed as in Form 234, and after stating the cause of action insert*]: and on or about the . . . day of . . . . ., 19. . ., the defendant C. . . . D. . . . being the owner of a certain stock of goods and merchandise then situated in a certain store building in the city of . . . . ., secretly removed the said property to some place outside of the limits of the state of . . . . .with intent thereby to defraud his creditors, and that the said defendant, C. . . . D. . . ., has no other property within the state of . . . . .upon which execution can be levied [*or, state fully the facts showing that defendant has removed or is about to remove or dispose of his property, with intent to defraud his creditors*].



**241. Affidavit for arrest in an action where defendant is a non-resident, or is about to remove from the state (Wisconsin and South Dakota).**

[Proceed as in Form 234 to the \* and insert a statement of the cause of action showing that it is one not arising out of contract, and insert after the \*\* and before the final sentence]: That said defendant is not a resident of this state [and, if his residence is known, that he resides at . . . . ., in the state of . . . . .]

Or: That the above named defendant is about to remove from this state [here state facts sustaining allegation, e. g.] that he has sold his house in . . . . . and has taken a passage on board the . . . . ., for . . . . ., with family and his household goods [as the deponent is informed by M. . . . . Z. . . . ., the brother of the defendant, and verily believes].

**242. Affidavit for arrest in replevin, property concealed (Wisconsin).**

[Title of court and of cause.]

[Venue.]

A. . . . B. . . . being first duly sworn says that he is the plaintiff in the above entitled action; that he is the owner of and lawfully entitled to the possession of the following described property, to-wit, [describe same]; that said property is wrongfully detained from plaintiff by the said defendant and that the alleged cause of detention thereof, according to affiant's best knowledge, information and belief, is the false and groundless claim of the defendant that he owns [or, has a lien on] the property which claim the plaintiff denies and is ready to disprove; that said property has not been taken for a tax, assessment or fine, pursuant to the statute, nor seized under an execution or attachment against the property of this plaintiff; that the actual value of said property is the sum of . . . . . dollars; that on the . . . . day of . . . . ., 19. . ., this plaintiff commenced this action, and on his affidavit setting forth the facts above stated, which affidavit is now on file herein, and on an undertaking duly made, as required by section 2720 of the Wisconsin Statutes of 1913, and approved by O. . . . P. . . ., sheriff of said county, and now on file, reference thereto being hereby had, he required said sheriff to take the said property from said defendant and deliver the same to



this plaintiff; that he is informed by said sheriff that said defendant has removed, concealed or disposed of said property so that the same cannot be found or taken by the sheriff; and the affiant therefore desires an order for the arrest of said defendant in this action.

A.... B....

[*Jurat.*]

**243. Affidavit of sheriff to accompany above (Wisconsin).**

[*Title of court and of cause.*]

[*Venue.*]

E.... F.... being first duly sworn says that he is the sheriff of .....county: that he has read the foregoing affidavit of A.... B....; that on the ....day of ....., 19..., upon the requisition of said A.... B...., and due undertaking given and approved by affiant, he made search for and attempted to take the property described in the foregoing affidavit, but that the same could not be found after diligent search and inquiry, and that said defendant, C.... D.... refused to inform this affiant where the said property was, but told the affiant that he had concealed it to prevent the same being taken in this action.

E.... F....

[*Jurat.*]

**244. Undertaking for order of arrest (Wisconsin).**

[*Title of court and of cause.*]

WHEREAS A.... B...., the above named plaintiff, is about to apply for an order for the arrest of C.... D...., the above named defendant in this action;

NOW, THEREFORE we, A.... B...., the plaintiff, as principal, and E.... F.... and G.... H...., as sureties, all of ....., in said county, do hereby undertake that if the said A.... B...., defendant, recover judgment, the plaintiff will pay all costs that may be awarded to defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of .....dollars.

Dated....., 19..

A.... B....

E.... F....

G... H....

245. Plaintiff's affidavit to undertaking, if without surety to be added at the foot of last preceding form (Wisconsin).

[*Venue.*]

A.... B.... being first duly sworn says that he is the plaintiff in the above entitled action, and that he has signed the foregoing undertaking, and that he is a resident and householder and freeholder in the county of ..... within this state, and worth the sum of five hundred dollars, above all his debts and liabilities, and exclusive of all property exempt from execution by the laws of this state.

A.... B....

[*Jurat.*]

[*Endorsement of Judge's approval on above*]: The within undertaking is hereby approved both as to form and sufficiency of sureties.

[*Date.*]

J.... K....

.....Judge.

246. Order of arrest.

[*Title of court and of cause.*]

The State of..... to

the Sheriff of ..... County

GREETING: You are hereby required forthwith to arrest the above named defendant, C.... D...., and hold him to bail in the sum of .....dollars, in the manner required by law, and to return this order to L.... M...., attorney for the plaintiff, by whom this order is subscribed, at his office, in the city of ....., in said county, on the ....day of ....., 19..

Dated at ....., ....., 19..

J.... K....

Circuit Judge.

247. Undertaking to obtain discharge of defendant from arrest.

[*Title of court and of cause.*]

WHEREAS C.... D...., the above named defendant, has been arrested in this action by the order of the Hon. J.... K...., circuit judge, dated on the ....day of ....., 19..;

NOW, THEREFORE, we, E.... F...., merchant, and G.... H...., farmer, both of ....., in said county, do hereby undertake in the sum of one thousand dollars that the said defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein.

Dated at ....., ....., 19..

[Venue.]

E.... F.... and G.... H.... being each first duly sworn, each for himself says that he has signed the foregoing undertaking; that his residence and occupation are therein truly stated; that he is a resident and householder and freeholder within this state, and that he is worth the sum of one thousand dollars over and above all his debts and liabilities in property within this state, exclusive of property exempt from execution by the laws of this state.

E.... F....

[Jurat.]

G.... H....

**248. The same (Wash. Rem. & Bal. Code 1910 sec. 758).**

[Proceed as in last preceding form to the \* and continue]:

NOW, THEREFORE, we, E....F.... residing at..... in the county of ..... by occupation a merchant, and G.... H.... residing at .....in the county of .....by occupation a farmer, jointly and severally undertake and bind ourselves unto the said plaintiff in the sum of one thousand dollars; then the said defendant shall at all times render himself amenable to the process of the said court during the pendency of the said action, and to such as may be issued to enforce the judgment herein; [if the arrest be had in a replevin action add] and that the specific articles of personal property [or instrument in writing] which is the subject matter of the writ shall be forthcoming to abide any order which shall be made in said action; [if the arrest be had in an action to prevent threatened destruction of property insert instead and that the defendant will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest herein was ordered].

Dated the.... day of....., 19..

E.... F....

G.... H....

*Justification of sureties.*

State of Washington  
County of.....

E.... F.... and G.... H.... the sureties above named being each duly sworn each for himself says that he is a resident and freeholder within the state of Washington and is not a counsellor or attorney at law, sheriff, clerk or other officer of any court and is worth the sum of .....dollars over and above all his debts and liabilities exclusive of property exempt from execution.

E.... F....  
G.... H....

[*Jurat.*]

*Certificate of Sheriff thereon.*

State of Washington  
County of.....

I hereby certify that the within is a full and true copy of the original undertaking now in my hands for service this ....day of ....., 19..

J.... K.... Sheriff.

**249. Notice of exception to bail.**

[*Title of court and of cause.*]

To L.... M....., Esq.,  
Sheriff of .....County.

Sir: Please take notice that the plaintiff does not accept the bail given by the defendant in this action upon his arrest.

Dated at ....., ....., 19..

N.... O....  
Plaintiff's Attorney.

**250. Undertaking to obtain discharge from arrest in replevin.**

[*Title of court and of cause.*]

WHEREAS the above entitled action has been brought by the above named plaintiff against the above named defendant, to recover the possession of the following personal property [*describing same*] which is alleged to be unjustly detained, the value of which property is stated in the affidavit of said plaintiff to be .....dollars;

And whereas C.... D..., the above named defendant, has been arrested in said action for the cause mentioned in the third subdivision of section 2689 of the Wisconsin Statutes of 1913 [*or, in North Dakota, the third subdivision of section 6890 of the Revised Codes of North Dakota, 1905, or, in South Dakota, the third subdivision of section 157 of the Code of Civil Procedure of South Dakota, 1908*];

NOW, THEREFORE, we, E.... F..., of ....., county of..... and state of....., merchant, and G.... H..., of ....., county of..... and state of..... mechanic, do hereby acknowledge ourselves bound in the sum of..... dollars [*this sum must be double the value of the property replevined*] for the delivery of said personal property to said plaintiff if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against said defendant.

Dated....., 19..

E.... F....  
G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn, each for himself says that he is the person of that name described in and who executed the foregoing undertaking; that he is a resident, householder and freeholder within the state of..... and is worth the sum of..... dollars, over and above all his debts and liabilities in property within this state and exclusive of all property exempt from execution by the laws of this state.

E.... F....  
G.... H....

[*Jurat.*]

### 251. Sheriff's return of arrest.

[*Venue.*]

I hereby certify and return that I have taken and arrested the within named C.... D.... as required by the within order [*add, if bai has not been given: and that the said C.... D.... remains imprisoned in the common jail in my county for want of bail*] [*or, in case defendant has made deposit in lieu of bail insert*]: and that the defendant has deposited with me .....dollars in lieu of and instead of bail in the above entitled action.

E.... F....  
Sheriff of.....County.



**252. Sheriff's certificate of deposit in lieu of bail (Wis. Stats. 1913 sec. 2698; N. Dak. Rev. Codes 1905 sec. 6908; S. Dak. Code C. P. 1908 sec. 175).**

[*Title of court and of cause.*]

[*Venue.*]

I, E.... F...., sheriff of the county of....., hereby certify that I have received from the defendant the sum of .....dollars as deposit instead of bail, being the amount named in the order of arrest in this action.

E.... F....  
Sheriff of.....County.

**253. Clerk's certificate of deposit in lieu of bail (Wis. Stats. 1913 sec. 2699; N. Dak. Rev. Codes 1905 sec. 6909; S. Dak. Code C. P. 1908 sec. 176).**

[*Title of court and of cause.*]

[*Venue.*]

I, G.... H...., clerk of the.....court of.....county, hereby certify that the sheriff of said county has deposited in this court the sum of .....dollars, as having been paid to him by C.... D...., the defendant in this action, in lieu of an undertaking of bail herein.

G.... H....,  
Clerk of the.....Court  
of.....County.

**254. Affidavit on motion to vacate arrest.**

[*Title of court and of cause.*]

[*Venue.*]

C.... D.... being first duly sworn says:

1. That he is the defendant in the above entitled action.
2. That on the...day of....., 19.., this affiant was arrested by the sheriff of.....county, by virtue of an alleged order of arrest, a copy of which order and of the papers on which it was granted are hereto attached and made part hereof.
3. That he has not yet given bail as required by law, and is now actually confined by said sheriff in the county jail of.....county.

4. That, as he is advised and verily believes, his arrest is irregular, illegal, and the said order improvidently made for the following reasons [*here state grounds of illegality*].

5. That, as he is advised and verily believes, the said arrest is also irregular and illegal by reason of the following facts, which he avers to be true to his own knowledge [*state particularly additional facts which render the arrest illegal*].

C.... D....

[*Jurat.*]

### 255. Notice of motion to vacate arrest or reduce bail.

[*Title of court and of cause.*]

Sir:

Please take notice that on the pleadings and papers heretofore filed and served in this action, and on the affidavit of C.... D...., hereto annexed, the defendant C.... D.... will move the court, at a regular term to be held [*state where*] on the....day of....., 19.., at the opening of court on that day or as soon thereafter as counsel can be heard [*or, will move before Hon. [name the judge] at chambers [state where] at 10 o'clock A. M., or as soon thereafter as counsel can be heard*], as follows:

1. To vacate the order of arrest made in this action against this defendant; or,
2. To reduce the amount of bail on such arrest, if the court shall decline to vacate the same, and
3. For the costs of this motion and such other or further relief as to the court [*or, judge*] may seem just.

Dated....., 19..

L.... M....

Defendant's Attorney.

[*Address.*]

### 256. Order vacating arrest.

[*Caption.*]

On reading and filing [*name the papers used on the motion*], and after hearing L.... M...., Esq., of counsel for defendant in support of the motion, and O.... P...., Esq., of counsel for plaintiff in opposition thereto; on motion of L.... M...., Esq., attorney for defendant,

ORDERED: 1st. That the order of arrest made in this action on the . . . day of . . . . ., 19. . ., by [*name court or judge*] against the defendant C. . . . D. . . . be and the same is hereby vacated.

2nd. That the undertaking given by said defendant and his bail upon such arrest be delivered up and the principal and sureties discharged therefrom.

3rd. That defendant have his costs of this motion allowed at ten dollars, to be paid [*state when*] by the plaintiff.

Dated. . . . ., 19. . .

G. . . . H. . . .  
Circuit Judge.

### 257. Order reducing bail.

[*Proceed as in last preceding form, and at close of recitals insert*]:

ORDERED: 1st. That the bail herein be and is reduced to the sum of . . . . . dollars.

2nd. That defendant be required to give undertaking or make deposit only in such sum [*or, if bail has already been given, that the liability of the sureties on the undertaking of bail filed herein be and is reduced to said sum*]; [*or, that the sureties on said undertaking be allowed to file a new undertaking in such amount, and upon such filing the clerk is directed to surrender to them to be canceled the original undertaking filed herein*].

Dated. . . . ., 19. . .

By the Court:  
G. . . . H. . . ., Circuit Judge.

### 258. Notice of justification of bail.

[*Title*.]

To A. . . . B. . . ., Plaintiff, [*or O. . . . P. . . . Plaintiff's Attorney*],

TAKE NOTICE that E. . . . F. . . . and G. . . . H. . . ., the bail in this action, will justify before the Hon. J. . . . K. . . ., Judge of this court [*or give name and title of official before whom the justification will take place*] at his chambers in the court house at the city of . . . . . in said county on the . . . day of . . . . . next, at . . . o'clock in the . . . noon.

[*Date*.]

L. . . . M. . . . Sheriff,  
[*or C. . . . D. . . ., Defendant*].

**259. Justification of bail.**

[Title.]

On this....day of....., 19.., before the undersigned J.... K...., Judge of said court [or give name of the official before whom justification is had] personally appeared E.... F.... and G.... H...., the bail of the defendant in the above entitled action, to justify pursuant to the notice heretofore given, and the said E.... F...., being duly sworn, says [or give the testimony, inserting the same by question and answer if deemed necessary].

And the said G.... H...., being duly sworn, says [inserting testimony of G.... H....].

[Each bail should sign at the end of his own testimony.]

In witness whereof I have set my hand the day and year before written.

J.... K....

Judge.

[This examination is to be annexed to the undertaking and the judge should endorse his allowance upon the undertaking as in the form following.]

**260. Allowance of bail.**

This day appeared before me the within named E.... F.... and G.... H...., bail for the defendant C.... D.... in this action, and justified as such bail, and finding the said bail to be sufficient I hereby allow the same.

[Date.]

J.... K....

.....Judge.

**261. Authority to arrest principal.**

To L....M...., Sheriff of county [or give name of individual to whom authority is given],

TAKE NOTICE that I, E.... F...., the within named bail, do hereby authorize and empower you in my place and in my behalf to arrest and seize the body of C.... D...., the within named defendant, in exoneration of my undertaking as bail for the said C.... D.... in the within named cause.

[Date.]

E.... F....

[The foregoing is to be endorsed upon the certified copy of the undertaking given by the bail.]

**262. Certificate of surrender.**

[Venue.]

I, L.... M...., Sheriff of the county of....., hereby certify that C.... D...., the defendant named in the within undertaking was surrendered to me by E.... F.... and G.... H...., his bail, this ....day of...., 19.., and remains in my custody.

L.... M....,  
Sheriff.

**263. Order exonerating bail.**

[Title.]

On this ....day of....., 19.., appeared before me at my chambers at the court house in the city of....., E.... F.... and G.... H...., who signed the undertaking as bail for the defendant in the above entitled action and produced to me a copy of the said undertaking together with the certificate of L.... M...., Sheriff of.....county, showing that they had surrendered the said defendant into the custody of the said sheriff on the....day of....., 19..; it appearing from said certificate that the said C.... D.... is now in custody of the said sheriff; and it appearing by due proof that the proper notice of this application for the exoneration of said bail has been given to the plaintiff, M.... N...., Esq. appearing for the said bail and O.... P...., Esq., for the plaintiff.

IT IS ORDERED that the said bail be and are hereby exonerated from further liability.

[Date.]

J.... K....  
.....Judge.

**264. Notice of motion for enlargement of time to surrender.**

[Title.]

To A.... B...., Plaintiff, and O.... P...., Esq. his attorney,

TAKE NOTICE that upon the affidavit of E.... F...., of which a copy is herewith served upon you, the undersigned will move before the.....court of.....county at the court house in the city of....., on the....day of..... next, at....o'clock A. M., or as soon thereafter as counsel



can be heard that the undersigned bail of the defendant C.... D.... in this action have.....days further time in which to surrender the defendant to the sheriff in exoneration of their liability as bail herein and for such order as may be just.

[Date.]

E.... F....

G.... H....

### 265. Affidavit in support of above motion.

[Title.]

[Venue.]

E.... F...., being duly sworn, says that he is one of the bail of the above named defendant in this action; that said defendant was arrested on the....day of....., 19.., by virtue of an order of arrest in the said action, and that on the ....day of....., 19.., this deponent and G.... H...., Esq. became bail for the said defendant by giving an undertaking of which a copy is hereto annexed; that it has been impossible up to the present time for this deponent and his fellow bondsmen to surrender the said C.... D.... to the custody of the sheriff for the reason [*here state why the principal could not be surrendered and all the efforts the bail have taken to ascertain the principal's whereabouts and surrender him*].

That as the deponent is informed and believes it will be possible within.....days for him to surrender the said C.... D.... into the custody of the sheriff [*stating facts showing that the surrender will be possible*].

Deponent further says that no action has been commenced upon the said undertaking as he is informed and believes.

E.... F....

[Jurat.]

## CHAPTER IX.

### APPEARANCE OF PARTIES

- |   |   |
|---|---|
| 266. General appearance in person.                  | 270. The same, with waiver of   |
| 267. The same, with demand of<br>copy of complaint. | notice of subsequent pro-<br>ceedings.  |
| 268. General appearance by attor-<br>ney.           | 271. Notice for special purpose<br>only.  |
| 269. The same, with demand of<br>copy of complaint. | 272. The same, with motion to set<br>aside service of summons,<br>etc., and vacate proceedings. |

#### 266. General appearance in person.

[Title.]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that I appear in this action.

C.... D...., Defendant in Person,  
No. .... Street, City of .....

#### 267. The same, with demand of copy of complaint.

[Title.]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that I appear in this action, and demand  
that a copy of the complaint be served on me at my office  
No. ...., Street, in the city of .....

C.... D....,  
Defendant in Person,  
No. .... Street,  
City of .....

#### 268. General appearance by attorney.

[Title.]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that I am retained by and appear for  
the defendant [or, defendants; or, if not retained by all the

*defendants*, the defendants G.... H.... and I.... K....] in this action.

L.... M...., Defendants' Attorney  
 [Or, Attorney for Defendants  
 G.... H.... and I.... K....],  
 No. .... Street, City of .....

**269. The same, with demand of copy of complaint.**

[*Title.*]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that I am retained by and appear for the defendant, C.... D.... in this action; and demand that a copy of the complaint be served on me at my office, No .... Street in the city of .....

G.... H....,  
 Attorney for the Defendant  
 C.... D.... [*Address.*]

**270. The same, with waiver of notice of subsequent proceedings.**

[*Title.*]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that we are retained by and appear for the above named defendant, C.... D...., in this action; and hereby waive notice of all subsequent proceedings herein, except [*here specify exception if any*].

Dated ....., 19..

G.... H....,  
 Attorney for the Defendant  
 C.... D.... [*Address.*]

**271. Notice for special purpose only.**

[*Title.*]

To E.... F...., Plaintiff's Attorney.

Sir:

Please take notice that we appear specially in this action for the defendant, C.... D...., as his counsel, for the pur-

pose only of [state what] and that said C.... D...., defendant, does not appear generally herein.

Dated....., 19..

G.... H....,  
Attorney for the Defendant  
C.... D.... [Address.]

**272. The same, with motion to set aside service of summons, etc., and vacate proceedings.**

[Title.]

Sir:

Please take notice that I appear specially for the defendant in this action, for the purpose of this motion only; and that upon the annexed affidavits of L.... M.... and O.... P.... and upon the summons, return and record herein I, so specially appearing, shall move, before the Hon. I.... K...., circuit judge, at his chambers in the court house in the city of ....., Wisconsin, on the .... day of ....., 19.., at 2 o'clock in the .... noon, or as soon thereafter as counsel can be heard, that the service of the summons in this action be set aside and vacated, and the action dismissed with costs, for the reason that [here state reason, irregularities, etc.], with costs of motion.

Dated ....., 19..

G.... H....,  
Attorney for C.... D.... for  
the purposes of this motion only.  
[Address.]

To E.... F....,  
Plaintiff's Attorney.

## CHAPTER X.

### ATTACHMENT.

#### WISCONSIN

273. Affidavit for attachment.
274. The same, by attorney or agent.
275. Affidavit for attachment against defaulting municipal officer.
276. Affidavit for attachment on demand to become due.
277. Affidavit for attachment in tort action.
278. Allegation of complaint on demand to become due, in an action where attachment is obtained.
279. Amended affidavit of attachment.
280. Undertaking for writ of attachment.
281. Writ of attachment.
282. Indemnity bond to sheriff.
283. Return of sheriff on attachment of personal property.
284. Inventory and appraisal of attached personal property.
285. Oath of appraisers.
286. Sheriff's return of levy on real property.
287. Notice to defendant of second levy on property previously attached.
288. Affidavit for order of sale of perishable property.
289. Order of sale of perishable property.
290. Receipt of receptor.
291. Affidavit by defendant for additional security.
292. Notice of application for additional security.

293. Order for additional security.
294. Defendant's undertaking for release of attachment.
295. Notice of motion to vacate attachment.
296. Order vacating attachment.
297. Traverse of attachment.
298. Finding for defendant on trial of traverse.
299. Petition of intervening creditor to set aside prior attachment.
300. Order of hearing on said petition.
301. Order vacating attachment.
302. Order awarding issues on said petition.
303. Petition for intervention by third person whose property is attached.
304. Affidavit for attachment to enforce log lien.
305. Writ of attachment to enforce log lien.
306. Affidavit of intervenor who seeks to defend log lien action.
307. Undertaking by intervenor after judgment to stay execution in log lien action.
308. Complaint in action to enforce log lien.

#### CALIFORNIA

309. Affidavit for attachment against resident.
310. The same, against non-resident.
311. The same, in a tort action.
312. Undertaking for attachment.



313. Writ of attachment.  
 314. Sheriff's notice indorsed on writ.  
 315. Sheriff's return on attachment of non-leviable assets.  
 316. Sheriff's return on attachment of real or personal property.  
 317. Notice of motion to discharge attachment for irregularity.  
 318. Notice of motion to release attachment on giving undertaking.  
 319. Undertaking for release of attachment.  
 320. Order releasing attachment on giving undertaking.  
 321. Order discharging attachment for irregularity.  
 322. The same, with directions as to proceeds of property sold.  
 323. Notice of attachment of real property.  
 324. Affidavit of third person claiming attached property.  
 325. Indemnity bond by plaintiff to sheriff.  
 326. Undertaking to obtain release of partnership property, one partner's interest alone being attached.  
 327. Notice of motion to extend attachment lien.  
 328. Order extending attachment lien.  
 329. Release of real property from attachment.

## ARIZONA

330. Affidavit for attachment.  
 331. The same, for debt not due.  
 332. Bond on attachment.  
 333. Writ of attachment.  
 334. Indemnity bond to sheriff.  
 335. Affidavit of third person claiming title to attached property.  
 336. Bond given by third person claiming title to attached property.

337. Execution in attachment.

## ARKANSAS

338. Affidavit for attachment, bond, writ and subsequent papers.

## COLORADO

339. Affidavit for attachment.  
 340. Undertaking on attachment.  
 341. Writ of attachment.  
 342. Bond for release of attachment.  
 343. Petition for intervention.  
 344. Sheriff's demand for certificate as to corporate stock held by defendant.  
 345. Certificate by corporate officer as to stock held by defendant.  
 346. Sheriff's notice of levy on corporate stock.

## IDAHO

347. Affidavit for attachment, undertaking, writ and subsequent papers.

## IOWA

348. Petition for writ of attachment.  
 349. The same, on debt not due.  
 350. Affidavit for attachment for debt due the state.  
 351. Affidavit for attachment of specific property.  
 352. Plaintiff's bond in attachment.  
 353. Writ of attachment.  
 354. Writ of attachment in divorce, without bond.  
 355. Sheriff's return of writ.  
 356. Notice of ownership of attached property by third person.  
 357. Indemnifying bond by plaintiff.

- 358. Defendant's bond to perform judgment and discharge attachment.
- 359. Defendant's delivery bond.
- 360. Counter-claim by defendant on attachment bond.
- 361. Notice of appointment of jury to determine perishable character of property attached.
- 362. Sheriff's summons to jurors in cases of attachment of perishable property.
- 363. Report of jurors as to perishable character of property attached.

## KANSAS

- 364. Affidavit, undertaking and subsequent papers in attachment.

## MONTANA

- 365. Affidavit for attachment.
- 366. Undertaking for attachment.
- 367. Writ for attachment.
- 368. Statement furnished to sheriff.

## MINNESOTA

- 369. Affidavit for attachment.
- 370. Allowance of writ.
- 371. Bond for attachment.
- 372. Writ of attachment.
- 373. Sheriff's return and certificate on attachment.
- 374. Affidavit of third person claiming title to attached property.
- 375. Indemnifying bond by plaintiff to sheriff.
- 376. Sheriff's demand on third person for certificate.
- 377. The same, where shares of stock are attached.
- 378. Certificate of third person as to property held.
- 379. Certificate by officer of corporation as to shares of stock.

- 380. Affidavit of refusal to furnish certificate.
- 381. Order for examination of third person refusing to furnish certificate.
- 382. Bond by defendant for release of attachment.
- 383. Discharge of attachment by plaintiff.
- 384. Complaint in action to enforce log lien by attachment.

## MISSOURI

- 385. Affidavit for attachment.
- 386. Bond for attachment.
- 387. Writ of attachment.
- 388. Delivery bond in attachment.

## NEBRASKA

- 389. Affidavit for attachment.
- 390. Allowance in non-contract action.
- 391. Affidavit for attachment on debt not due.
- 392. Order granting attachment on claim not due.
- 393. Undertaking in attachment.
- 394. Order of attachment.
- 395. Inventory and appraisal of attached property.
- 396. The same, another form.
- 397. Undertaking by defendant to perform judgment.
- 398. Forthcoming bond in attachment.
- 399. Application for receiver in attachment.
- 400. Order appointing a receiver.
- 401. Undertaking by receiver in attachment.
- 402. Receiver's oath.

## NORTH DAKOTA

- 403. Affidavit for attachment.
- 404. Plaintiff's undertaking for attachment.
- 405. Warrant of attachment.
- 406. Defendant's undertaking to pay judgment.

407. Defendant's undertaking that property shall be forthcoming.
408. Notice of attachment of real estate or bulky personal property, to be recorded in office of register of deeds.
409. The same, to be served on the occupant or person in possession thereof.
410. Plaintiff's indemnifying undertaking to sheriff.
411. Undertaking to obtain release of partnership property when the interest of one partner only is seized.

## SOUTH DAKOTA

412. Affidavit for attachment.
413. Undertaking for attachment.
414. Warrant of attachment.
415. Claim of ownership of attached property by third person.
416. Notice of third person's claim to be given by sheriff to plaintiff.
417. Oath to jurors upon trial of claim.
418. Oath to witness upon trial of claim.
419. Verdict of jury upon the trial of claim.
420. Indemnifying undertaking by plaintiff after adverse verdict by sheriff's jury.
421. Undertaking by defendant to discharge attachment.
422. Affidavit for discharge of attachment on partnership property attached in an action against one partner alone.
423. Undertaking for discharge of attachment on partnership property.

## OKLAHOMA

424. Affidavit for attachment.

425. The same, for rent of farm lands.
426. Undertaking for attachment.
427. Order of attachment.
428. Sheriff's return on attachment.
429. Sheriff's inventory and appraisalment on attachment.
430. Forthcoming bond in attachment.
431. Undertaking to discharge attachment.
432. Indemnity bond.

## OREGON

433. Affidavit for attachment.
434. Undertaking for attachment.
435. Sheriff's notice of attachment.
436. Writ of attachment.
437. General indemnity bond in attachment.
438. Sheriff's return on attaching personal property.
439. Certificate of attachment of real estate.
440. Re-delivery bond.
441. Undertaking for discharge of attachment.
442. Indemnity undertaking to continue attachment.

## TEXAS

443. Affidavit for attachment.
444. Attachment bond.
445. Writ of attachment.
446. Sheriff's return of levy on real estate in attachment.
447. Plaintiff's indemnity bond.
448. Replevy bond in attachment.
449. Affidavit and bond of third person claiming title to attached property.

## UTAH

450. Affidavit for attachment.
451. Undertaking for attachment.
452. Writ of attachment.

## WASHINGTON

453. Affidavit for attachment.  
 454. Bond for attachment.  
 455. Writ of attachment.

456. Re-delivery bond in attachment.  
 457. Affidavit for attachment, undertaking, writ and subsequent papers.

The provisional remedy denominated attachment, by which the defendants' property is seized and remains in the custody of the law to answer to the final judgment in the action, exists in all of the states covered by this work and under statutory provisions, which while possessing some general similarities also present many points of difference. The general features of these statutes are indicated in the note.<sup>1</sup> The forms here given, when properly adapted will, it is believed, outline the practice in the various states.

<sup>1</sup> As the practitioner will undoubtedly find it necessary to consult the statutes of his own state in detail in any pending case, it is not deemed helpful to encumber the present work with extensive quotations or citation of the particular statutory provisions covering specifically the various features of the attachment procedure in the several states. The more general provisions are, however, referred to in the following condensed summary, showing the actions in which, and the conditions under which the proceedings will lie. Considered very generally, and as will appear from paragraphs (1) and (2) of the subjoined citations, the states covered by this work fall mainly into two groups, as regards the form of expression of the attachment statutes, and for convenience of reference they may be cited accordingly, though without attempting any analytical classification. Thus, attachment will lie:

[1] In an action for debt not exceeding fifty dollars, due upon contract express or implied, or upon judgment or decree, (Wis. Stats. 1913 sec. 2729), or an action for the recovery of money, (Ark. Dig. of Stats. 1904 sec. 344; Kans. Gen. Stats. 1909 sec. 5783; Neb. R. S. 1913 sec. 7732 Okla. Comp. Laws 1909 sec.

5701; Wyo. Comp. Stats. 1910 sec. 4847), or in all cases of garnishment, (Ark. Dig. of Stats. 1904 sec. 353), or any action on contract express or implied, (Colo. Code Ann. 1911 sec. 97-98), or any civil action, (Iowa Ann. Code 1897 sec. 3876, 3878, 3880; Mo. R. S. 1909 sec. 2294; S. Dak. C. C. P. 1908 sec. 205, 207), or a suit for alimony, (Kans. Gen. Stats. 1909 sec. 5783), or an action for the recovery of money other than for libel, slander, seduction, breach of promise of marriage, false imprisonment, malicious prosecution, or assault and battery, (Minn. Gen. Stats. 1913 sec. 7845-7846), or an action on a contract or judgment for the recovery of money only, or for the wrongful conversion of personal property, or for damages whether arising out of contract or otherwise, (N. Dak. Rev. Codes 1905 sec. 6938), or an action upon a debt, (Tex. Civ. Stats. Ann. 1913 art. 210; Wash. Rem. and Bal. Code 1910 sec. 647-648), upon the following grounds, respectively:

(a) When the defendant has, or is about to abscond, or is concealed, to the injury of the plaintiff, or to avoid service of summons; or is a foreign corporation or a non-resident, (in all the states cited above), or is a do-

mestic corporation and its officers cannot be found or are non-residents, (Wisconsin, Colorado and Missouri). In Arkansas, however, attachment on the ground that defendant is a non-resident or a foreign corporation will lie only on demands arising upon contract; and in South Dakota, as to foreign corporations, only when they have failed to appoint an agent in the state to accept service of process.

(b) When the defendant has, or is about to remove his property out of the jurisdiction in fraud of creditors, (in all the states cited; except Minnesota).

(c) When the cause of action accrued out of the state, and the defendant has absconded, or secretly removed his property or effects into the state, (Missouri).

(d) When the defendant has, or is about to assign, convey, dispose of or conceal his property in fraud of creditors, (in all the states cited).

(e) When the defendant is about to convert his property into money for the purpose of placing it beyond the reach of creditors, (Iowa, Kansas, Nebraska, Oklahoma, Texas, Washington and Wyoming).

(f) When the defendant has failed to pay the price or value of any article or thing delivered, for which, by contract, he should have paid on delivery, (Colorado, Kansas, Missouri, North Dakota, Oklahoma), or the price or value of work or labor, which should have been paid on completion thereof, (Colorado).

(g) When the defendant has fraudulently contracted the debt or obligation, (Wisconsin, Colorado, Kansas, Minnesota, Missouri, Nebraska, Oklahoma and Washington).

(h) When the debt is due for property obtained under false pretenses, (Iowa, North Dakota, South Dakota and Texas).

(i) When the defendant has fraudulently or criminally contracted the debt or incurred the obligation, (Wyoming).

(j) When the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor, or the seduction of any female, (Kansas, Missouri, Oklahoma), or felony, or seduction of some female, (Washington).

(k) When the action is brought against defendant as principal on an official bond, to recover money due the state, county, or other municipality; or bond or other security for the payment of money embezzled or misappropriated by an officer of the state, county, or other municipality, (Wisconsin).

(l) In an action for money due the state, for a specific amount, when the defendant has refused to pay or secure the same, (Iowa Ann. Code 1897 sec. 3919).

[2] In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in the state, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property; or, if originally so secured, such security has without any act of the plaintiff or the person to whom the security was given, become valueless, (Cal. C. C. P. 1906 sec. 537; Ariz. R. S. 1913 sec. 1393; Idaho Rev. Codes 1908 sec. 4302; Mont. Rev. Codes 1907 sec. 6656; Oregon Laws 1910 sec. 295 Utah Comp. Laws 1907 sec. 3064), or an action upon a judgment of any state or territory, (Ariz. R. S. 1913 sec. 1393). In Utah, however, the attachment will lie only:

(a) When the defendant is not a resident of the state; or

(b) Stands in defiance of an officer, or conceals himself so that process cannot be served upon him; or



(c) Has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal any of his property with intent to defraud his creditors; or

(d) Has departed or is about to depart from the state to the injury of his creditors; or

(e) Fraudulently contracted the debt, or incurred the obligation respecting which the action is brought.

[3] In any action upon contract, express or implied, against a defendant not residing in the state, (Cal. C. C. P. 1906 sec. 537; Ariz. R. S. 1913 sec. 1393; Idaho Rev. Codes 1908 sec. 4302; Oregon Laws 1910 sec. 295).

[4] In three states there are special provisions for attachment in actions for damages, namely: an action sounding in tort, for damages claimed exceeding fifty dollars, when the defendant is a non-resident or his residence is unknown, or is a foreign corporation, (Wis. Stats. 1913 sec. 2729), or an action against a non-resident for damages arising from injury to property by wrongful act, (Cal. C. C. P. 1906 sec. 537), or an action for damages, when the defendant is about to dispose of or remove his property beyond the jurisdiction for the purpose of defeating the collection of the judgment, (Ariz. R. S. 1913 sec. 1393).

[5] In addition to the foregoing there are, in many states, specific provisions authorizing attachments in particular cases, e. g., in proceedings for the collection of taxes, (Wis. Stats. 1913 sec. 1127), in actions for enforcing liens upon logs, timber, firewood, etc., (Wis. Stats. 1913 sec. 3332), or blacksmith's liens, (Wis. Stats. 1913 sec. 3347i), or liens against ships, boats, or vessels, (Wis. Stats. 1913 sec. 3351; Ark. Dig. of Stats. 1904 sec. 434), in actions to recover the possession of personal property ordered to be delivered to the plaintiff and where the property has been disposed of, concealed or removed so that the order for de-

livery cannot be executed, (Ark. Dig. of Stats. 1904 sec. 344), in actions to enforce a mortgage or lien upon personal property, or for the recovery, partition or sale of such property, or by a plaintiff having a future interest therein, to secure his rights, where the property is about to be sold, concealed or removed from the state, (Ark. Dig. of Stats. 1904 sec. 400; Iowa Ann. Code 1897 sec. 3913), in an action by the vendor of property fraudulently purchased, to vacate the contract, (Ark. Dig. of Stats. 1904 sec. 401; Iowa Ann. Code 1897 sec. 3914). As these and similar provisions are not general, or not generally uniform, the statutes of each state should be carefully examined when the particular case arises for their application, and should be strictly followed in the practice.

[6] Attachment upon debts, claims or demands not yet due, in the cases within the attachment statutes, may be had in the following states under the provisions cited, namely, (Wis. Stats. 1913 sec. 2729; Ark. Dig. of Stats. 1904 sec. 396; Colo. Code Ann. 1911 sec. 105; Iowa Ann. Code 1897 sec. 3983; Kans. Gen. Stats. 1909 sec. 5814; Mo. R. S. 1909 sec. 2295; Neb. R. S. 1913 sec. 7778; N. Dak. Rev. Codes 1905 sec. 6639; S. Dak. C. C. P. 1908 sec. 226; Okla. Comp. Laws 1909 sec. 5753; Texas Civ. Stats. Ann. 1913 art. 243; Wash. Rem. and Bal. Code 1910 sec. 649; Wyo. Comp. Stats. 1910 sec. 4890), respectively upon the following grounds:

(a) When the defendant has, or is about to abscond, or is concealed, to the injury of creditors, or to avoid service of summons, (Wisconsin, Colorado, Iowa, Texas, Washington), or is about to remove out of the state, with intent to change his domicile, (Missouri, Wyoming), or is a non-resident or foreign corporation or acting as such, (Texas).

(b) When the defendant has, or is about to remove his property out of the jurisdiction in

fraud of creditors. (Wisconsin, Arkansas, Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Oklahoma, Texas, Wyoming).

(c) When the cause of action accrued out of the state, and the defendant has absconded, or secretly removed his property or effects into the state, (Missouri).

(d) When the defendant has, or is about to assign, convey, dispose of, or conceal his property in fraud of creditors, (Wisconsin, Arkansas, Colorado, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Oklahoma, Texas, Washington, Wyoming).

(e) When the defendant is about to convert his property into money for the purpose of placing it beyond the reach of creditors, (Texas).

(f) When the defendant has failed to pay the price or value of any article or thing delivered, for which by contract he should have paid on delivery, (Colorado, Missouri, North Dakota), or the price or value of work or labor which should have been paid on completion thereof, (Colorado).

(g) When the defendant has fraudulently contracted the debt or obligation, (Wisconsin, Colorado, Missouri).

(h) When the debt was incurred for property obtained under false pretenses, (Iowa, North Dakota, South Dakota, Texas, Washington).

(i) When the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor, or the seduction of any female, (Missouri).

[7] In Arizona, (Ariz. R. S. 1913

sec. 1396); upon a debt or demand not yet due, on contract express or implied, or for damages, or against a non-resident or foreign corporation, or upon a judgment of any state or territory:

(a) When the defendant is indebted to the plaintiff, upon a contract express or implied, for the direct payment of money, payable in the state and not secured.

(b) When the defendant is about to remove permanently out of the state and has refused to secure the debt.

(c) When the defendant is about to remove property out of the state without leaving sufficient for the payment of his debts.

(d) When the defendant has secreted or is about to dispose of, his property to defraud creditors.

[8] In Montana, (Mont. Rev. Codes 1907 sec. 6658), upon any debt for the payment of money or specific property before the same shall have become due, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless:

(a) When the defendant is leaving, or is about to leave the state taking with him property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding creditors.

(b) When the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding creditors.

## 273. Affidavit for attachment (Wis. Stats. 1913 sec. 2731).

[Title.]

[Venue.]

A.... B.... being first duly sworn says that he is the plaintiff in the above entitled action; that the above named defendant, C.... D...., is indebted to him in a sum exceeding fifty dollars, to-wit, in the sum of ..... dollars and interest thereon at the rate of .... per cent per annum from ....., 19.., over and above all legal set-offs, and that the same is due upon express, [or, implied] contract, and that affiant has good reason to believe, that said defendant has absconded from this state, to the injury of his creditors;

Or; that defendant is about to abscond from this state to the injury of his creditors;

Or; that defendant is concealed in this state to the injury of his creditors;

Or; that defendant keeps himself concealed in this state with intent to avoid the service of a summons;

Or; that defendant has assigned, conveyed, disposed of or concealed, or is about to assign, convey, dispose of or conceal his property, or some part thereof, with intent to defraud his creditors; [or insert any other of the grounds of attachment contained in section 2731. Two or more grounds may be inserted in the same affidavit, but if so, the grounds must be stated conjunctively. *Morrison v. Fake*, 1 Pin. 133; *Winner v. Kuehn*, 97 Wis. 394, 72 N. W. 227.

[*Jurat.*]

A.... B....

## 274. The same, by attorney or agent (Wisconsin).

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is the attorney for [or agent of] the plaintiff in this action, and makes this affidavit in his behalf, and is hereunto duly authorized; that the above named defendant, C.... D...., is indebted to the above named plaintiff in a sum exceeding fifty dollars, to-wit, the sum of ..... dollars and interest thereon from ....., 19.., over and above all legal set-offs, and that the same is due upon express [or implied] contract; that the above allegation of indebtedness is made upon information derived from a promissory note now in affiant's possession executed by said defendant and delivered by him to the plaintiff for the sum aforesaid and dated ....., 19.. for ..... dollars, due in ..... months with interest

the execution of which note and the non-payment thereof defendant has admitted to this affiant, and such information defendant verily believes to be true.<sup>2</sup>

And affiant further says that he has good reason to believe that the said defendant has assigned, conveyed, disposed of and concealed, or is about to assign, convey, dispose of and conceal his property, or some part thereof, with intent to defraud his creditors. [*Or, state other ground or grounds of attachment.*]

[*Jurat.*]

A.... B....

### 275. Affidavit for attachment against defaulting municipal officer (Wisconsin).

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is the attorney for the above named plaintiff, and makes the affidavit in its behalf as such attorney, and is duly authorized thereunto; that defendant, C.... D...., is indebted to the plaintiff in a sum exceeding fifty dollars, to-wit, in the sum of ..... dollars and interest thereon from the .... day of ....., 19.., over and above all legal set-offs, and that the same is due upon express contract; that this action is brought against the defendant, C.... D...., as a principal on an official bond to recover money due to the state [*or, the county of ....., or, the city of .....*]; *or*, that deponent knows, and the fact is, that the action is brought against said defendant, C.... D...., as principal upon a bond given as evidence of indebtedness for, and to secure the payment of, money embezzled and misappropriated by such defendant, and while acting as an officer of the state [*or, county of ....., or, city of ....., the said plaintiff in this action.*]

[*Jurat.*]

A.... B....

<sup>2</sup> If the affidavit contains a positive statement of the amount of the indebtedness it will be sufficient, without stating the means of knowledge, even if made by an agent; but if made upon information

and belief the grounds upon which affiant's belief is founded must be stated and knowledge derived from the plaintiff alone is insufficient. *Streissguth v. Riegelman*, 75 Wis. 212; 43 N. W. 1116.

**276. Affidavit for attachment on demand to become due (Wisconsin).**

[Title.]

[Venue.]

A.... B.... being first duly sworn says that he is the plaintiff in the above entitled action; that C.... D...., the above named defendant, is indebted to him in a sum exceeding fifty dollars, to-wit, in the sum of ..... dollars and interest thereon, from the .... day of ....., 19..., over and above all legal set-offs, and that the same is to become due upon express contract, to-wit, upon a promissory note made, executed and delivered to the plaintiff by said defendant, on the .... day of ....., 19..., wherein and whereby defendant promised to pay the plaintiff the sum of ..... dollars .... months after date, with interest at the rate of .... per cent per annum from date until paid; and that deponent knows [or has good reason to believe], that the defendant [*here state ground or grounds of attachment as in preceding forms.*]

[Jurat.]

A.... B....

**277. Affidavit for attachment in tort action (Wisconsin).**

[Title.]

[Venue.]

A.... B.... being first duly sworn says that he is the plaintiff in the above entitled action; that a cause of action sounding in tort exists in favor of the plaintiff and against the defendant above named and that the defendant is not a resident of this state; [or, that the residence of defendant is unknown to the plaintiff and cannot with due diligence be ascertained; or, that the defendant is a foreign corporation.]

[Jurat.]

A.... B....

**278. Allegation of complaint on demand to become due, in an action where attachment is obtained (Wisconsin).**

[Title.]

The plaintiff, complaining of defendant, alleges:

I. That on or about the .... day of ....., 19..., defendant made, executed and delivered to plaintiff his certain promissory note in writing, of which the following is a



copy [*insert copy of note*]; that plaintiff is the lawful owner and holder of said note, and there is to become due thereon on the . . . . day of . . . . ., 19. . ., the sum of . . . . . dollars and interest, from the date of said note; that the same is owing to him and to become due, over and above all legal set-offs; that this action is commenced before the said demand is due, to enable plaintiff to proceed by attachment in this action, for the reason that he knows [*or, has good reason to believe*] that the defendant [*here state ground or grounds of attachment*].

WHEREFORE the plaintiff demands judgment, to be rendered after the maturity of the said demand for such sum as may then be due thereon, with costs, and prays that a writ of attachment may issue upon his affidavit and undertaking on file in this action, as provided by law.

E . . . F . . . .

Plaintiff's Attorney.

[*Verification.*]

[*Address.*]

**279. Amended affidavit of attachment (Wis. Stats. 1913 sec. 2731a).**

[*Title.*]

[*Venue.*]

A . . . . B . . . . being first duly sworn says that he is the plaintiff in the above entitled action; that he made an affidavit herein on the . . . . day of . . . . ., 19. . ., for the issuance of a writ of attachment against the property of the defendant C . . . . D . . . . which is on file herein; that at the time of the making of said affidavit said defendant was and still is indebted to the plaintiff in a sum exceeding fifty dollars, to-wit, the sum of . . . . . dollars and interest thereon from the . . . . day of . . . . ., 19. . ., over and above all legal set-offs; and that the same then was and still is due upon express [*or, implied*] contract; that deponent had, at the time of making said affidavit, and still has good reason to believe that defendant [*state ground or grounds of attachment*]; that the deponent makes this affidavit in amendment of and as a substitute for said former affidavit filed herein and to stand in lieu thereof.

[*Jurat.*]

A . . . . B . . . .

280. Undertaking for writ of attachment (Wis. Stats. 1898 sec. 2732).<sup>3</sup>

[Title.]

A writ of attachment in this action having been issued against the property of the defendant;

NOW, THEREFORE, we, G.... H...., of ....., farmer, and J.... K...., of ....., merchant, do hereby undertake, pursuant to the statute in such case made and provided, in the sum of ..... dollars, that if the defendant recover judgment in this action the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the writ of attachment, not exceeding the sum above named.

Dated ....., 19..

G.... H....  
J.... K....

[Venue.]

G.... H.... and J.... K...., each being first duly sworn before me, says each for himself that he is one of the subscribers to the foregoing undertaking; that his residence and occupation are therein truly stated; that he is a freeholder within this state and is worth ..... dollars, the sum specified in said undertaking, in property within this state over and above all his debts and liabilities and exclusive of all property exempt from execution.

G.... H....  
J.... K....

[Jurat.]

281. Writ of attachment (Wis. Stats. 1913 sec. 2730).

[Title.]

THE STATE OF WISCONSIN

to the sheriff of said County of .....

Greeting:

You are hereby commanded to attach and safely keep all the property of C.... D...., the defendant in the above entitled action, within your county, or so much thereof as

<sup>3</sup>It is not necessary that the plaintiff should sign the undertaking. If the same be signed by sufficient sureties the statute is satisfied. *Shakman v. Koch*, 93 Wis. 595 s. c. 67 N. W. 925. If the

attachment be issued upon a demand not yet due the undertaking must be conditioned in three times the amount demanded in the affidavit. Wis. Stats. 1913 sec. 2731.

may be sufficient to satisfy the demand of A.... B...., the plaintiff in the above entitled action, as specified in the affidavit of A.... B.... hereto annexed, to-wit, the sum of ..... dollars, together with costs and expenses, and of this writ make due return to said court, according to law.

WITNESS, the Hon. I.... K....

Presiding Judge of said Circuit Court, for the County of ....., at the court house in the .... of ....., in said County, this ... day of ....., in the year of Our Lord one thousand nine hundred and....

{ SEAL  
of  
COURT. }

G.... H....  
Plaintiff's Attorney.

E.... F....  
Clerk.

**282. Indemnity bond to sheriff (Wis. Stats. 1913 sec. 2739).**

KNOW ALL MEN by these presents that we, A.... B.... as principal, and G.... H.... and J.... K.... as sureties, all of ..... county, Wisconsin, are held and firmly bound unto L.... M...., sheriff of .....county, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said L.... M...., his heirs, executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this .... day of ....., 19..

WHEREAS the above bounden A.... B.... has sued out a writ of attachment in a certain action now pending in the circuit court of ..... county, against the property of C.... D...., defendant therein, and

Whereas said sheriff has doubts as to the ownership of the property which he is required to seize by virtue of said writ, and its liability to be taken thereunder,

NOW, THE CONDITION of this obligation is such that if the said A.... B.... shall well and truly save harmless the said L.... M.... and indemnify him, and any and all persons assisting him in the premises, from all harm,

damages, costs and expenses that shall or may at any time be incurred by him or them, as well for levying on and taking and holding the said property by virtue of said writ as for entering any building or premises for the taking of the same then this obligation to be void; otherwise of force.

	A....	B....	[Seal]
Signed, sealed and delivered	G....	H....	[Seal]
in presence of:	J....	K....	[Seal]
	W....	X....	
	Y....	Z....	

**283. Return of sheriff on attachment of personal property (Wis. Stats. 1913 sec. 2736).**

[*Venue.*]

I, L.... M...., sheriff of ..... county, certify that, as commanded by the within writ, on the .... day of ....., 19.., at said county, I seized and now hold the property of the defendant described in the annexed inventory; that I caused the said property to be appraised by two disinterested freeholders of the county, who were first duly sworn by me to make a true appraisalment thereof, which appraisalment is duly signed by them, and said inventory and appraisalment are returned herewith.

I further certify that on the .... day of ....., 19.., at said county I personally served on the said defendant the said writ of attachment, affidavit and undertaking annexed and inventory, by delivering to and leaving with him true copies of each and all of the same.

[*If property is subject to levy under a prior attachment, add*]: I further certify, having made a first levy and seizure of said property in the action of O.... P...., plaintiff, vs. Q.... R...., defendant, and thereafter a second levy and seizure thereof by virtue of this writ of attachment in this action, I gave the defendant notice, endorsed upon said last mentioned writ, that the property seized in the last named action is the same property in said first named action, and in which the inventory and appraisal were so made, and that the notice annexed to this return is a true copy of the notice so endorsed.

L.... M....  
Sheriff ..... County.

**284. Inventory and appraisal of attached personal property (Wisconsin).**

INVENTORY OF PERSONAL PROPERTY attached by virtue of annexed writ, the .... day of ....., 19..

Articles and Description.	Appraised by appraisers at
100 bushels of wheat .....	\$    cts.
200 bushels of corn.....	
etc., etc., etc.	

We, X.... Y.... and Y.... Z...., do certify that we have this .... day of ....., 19.., appraised the above mentioned property, and that the foregoing is the appraisal thereof as made by us, and that the same is true and correct to the best of our knowledge and belief.

Dated ....., 19..

X.... Y....  
Y.... Z....  
Appraisers.

**285. Oath of appraisers (Wisconsin).**

[Venue.]

X.... Y.... and Y.... Z.... being each duly sworn, each for himself says that he is a freeholder of said county, disinterested in this matter, and that he will make a true appraisal of the property mentioned in the foregoing inventory, so help him God.

X.... Y....  
Y.... Z....

**286. Sheriff's return of levy on real property (Wis. Stats. 1913 sec. 2737).**

[Venue.]

I, L.... M...., sheriff of said county, do certify that



pursuant to the within writ I have this . . . . day of . . . . ., 19.., at said county, attached the following described real estate, and all the interest of the within named defendant therein, to-wit, [*describe the premises*] by filing in the office of the register of deeds on said day, at . . . . o'clock P. M. a true copy of this writ of attachment and of this certificate endorsed thereon.

L. . . . M. . . .  
Sheriff.

**287. Notice to defendant of second levy on property previously attached (Wis. Stats. 1913 sec. 2736).<sup>4</sup>**

[*Venue.*]

Notice is hereby given to the defendant C. . . . D. . . . that the property seized by virtue of the within writ, in the within named action, is the same property seized in the action of O. . . . P. . . . against Q. . . . R. . . . now pending in the . . . . . court, in which the inventory and appraisal are made, and of which copies were served on him with the writ of attachment therein.

Dated . . . . ., 19..

L. . . . M. . . .  
Sheriff . . . . . County.

**288. Affidavit for order of sale of perishable property (Wis. Stats. 1913 sec. 2740).**

[*Title.*]

[*Venue.*]

L. . . . M. . . ., sheriff of . . . . . county, being first duly sworn, says that on the . . . . day of . . . . ., 19.., a writ of attachment in the above entitled action was delivered to him commanding him to attach and safely keep all the property of the defendant above named within his county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, to-wit, the sum of . . . . . dollars, together with costs and expenses; that by virtue thereof this affiant, on the . . . . day of . . . . ., 19.., seized in attachment among other things the following described goods and chattels, to-wit [*describe the same*]; that the same are of a nature

<sup>4</sup>The giving of this notice is jurisdictional, and it must be given as the statute prescribes or the lien by

attachment is lost. *Bank v. Greenwood*, 79 Wis. 269 sc. 48 N. W. 421.

likely to perish [*or, of such nature that the keeping thereof will be attended with much loss and expense*] for the following reasons [*here state facts showing property to be perishable or expensive.*]

L.... M....

[*Jurat.*]

### 289. Order of sale of perishable property (Wisconsin).

[*Title.*]

On reading and filing the annexed affidavit of L.... M...., sheriff of said county, it appearing that the property described is perishable;

ORDERED that the said property be sold in the following manner [*prescribe manner of sale and notice to be given*] and that the money realized from such sale be held by such officer in lieu of the property sold.

Dated ....., 19..

J.... K.... Circuit Judge  
[*or, County Judge, or,  
Court Commissioner.*]

### 290. Receipt of receptor (Wisconsin).

[*Title.*]

WHEREAS L.... M...., sheriff of ..... county, by virtue of a writ of attachment issued in this action, has attached the following goods and chattels as those of the defendant C.... D.... [*insert itemized list of goods as in inventory*].

RECEIVED of L.... M...., sheriff of ..... county, the above mentioned goods and chattels, which I hereby promise and agree to deliver in the same condition as when the levy thereon was made, to him at any time when demanded, at ....., or in default of such delivery I agree to pay any sum which the said sheriff may become liable for by reason of said attachment and the premises.

Dated ....., 19..

O.... P....

### 291. Affidavit by defendant for additional security (Wis. Stats. 1913 sec. 2733).

[*Title.*]

[*Venue.*]

C.... D.... being first duly sworn says that he is the

defendant in the above entitled action and that a writ of attachment has been issued in this action, and a large amount of property of the defendant attached, and the same is now held by the sheriff, to the value of . . . . . dollars; that defendant is not satisfied with the amount specified in the undertaking given by the plaintiff herein, which is the sum of . . . . . dollars only, nor with the sureties thereto, for the reason that said sum is insufficient, and the sureties are not, as affiant is informed and believes, sufficient.

This affiant says that he has fully and fairly stated the case in this action to L. . . . M. . . . , Esq., his counsel therein, who resides at . . . . . , in said county, and that upon such statement he is advised by said counsel and verily believes that he has a valid defense to said action upon the merits, and to the whole thereof, and that he intends to answer the complaint and defend said action; and that he makes this affidavit for the purpose of making application for additional security.

[*Jurat.*]

C. . . . D. . . .

**292. Notice of application for additional security (Wis. Stats. 1913 sec. 2733).**

[*Title.*]

Sir:

Please take notice that upon the affidavit of C. . . . D. . . . attached hereto, and upon the record and proceedings in said action, the above named defendant, by his counsel, will apply to the Hon. I. . . . K. . . . , judge [*or, court commissioner*], of said court, at . . . . . , on the . . . . day of . . . . . , 19. . . , at . . . . o'clock in the . . . . noon, or as soon thereafter as counsel can be heard, for an order requiring the plaintiff to give additional security in this action, upon the execution of the writ of attachment issued herein, and such further order as may be proper in the premises.

Dated . . . . . , 19. . .

E. . . . F. . . .

Defendant's Attorney.

To O. . . . R. . . .

Plaintiff's Attorney.

**293. Order for additional security (Wis. Stats. 1913 sec. 2733).**

[*Title.*]

The application of the defendant for an order requiring additional security, upon the execution of the writ of attachment therein, coming on to be heard this day upon the record and proceedings had herein and upon the affidavits of C.... D.... and E.... F...., read at the hearing of said motion, and after hearing L.... M...., Esq., of counsel for defendant, and O.... P...., Esq., of counsel for plaintiff.

ORDERED that plaintiff be required to give and file another undertaking, to be approved by me, in the sum of ..... dollars, with .... sureties, who shall justify their responsibility, such undertaking to be to the effect that if the defendant recover judgment in this action plaintiff will pay all costs that may be awarded to defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum aforesaid.

Dated ....., 19..

J.... K...., Circuit Judge  
[or, County Judge, or,  
Court Commissioner].

**294. Defendant's undertaking for release of attachment (Wis. Stats. 1913 sec. 2742).**

[*Title.*]

WHEREAS the property of the above named defendant has been taken by virtue of a writ of attachment issued herein and is now held by the sheriff of ..... county; and,

Whereas the said defendant desires a release of the property from such attachment;

NOW, THEREFORE, to obtain such release, we, E.... F.... and G.... H...., of ....., in said county, merchants, do hereby jointly and severally undertake that we will on demand pay to the plaintiff the amount of the judgment, with all costs, that may be recovered against the defendant in this action, not exceeding ..... dollars, with interest.

Dated ....., 19..

E.... F....  
G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn, each for himself says that he is a resident and freeholder in this state and that he is worth the sum of ..... dollars in property within this state over and above all his debts, and exclusive of all property exempt from execution.

E.... F....  
G.... H....

*Jurat.*]

**295. Notice of motion to vacate attachment (Wis. Stats. 1913 sec. 2744).**

[*Title.*]

Sir:

Please take notice that, upon the affidavit, undertaking, writ of attachment and sheriff's return thereon, filed in this action, and upon the complaint served and filed herein, the defendant, by his counsel, will at a regular term of said court, to be held at the court house in the city of ....., in said county, on the ... day of ....., 19.., at the opening of court on that day or as soon thereafter as counsel can be heard, move the court to vacate the said writ of attachment, for the reason that [*here state briefly the grounds on which the vacation is sought*].

Dated ....., 19..

E.... F....

To O.... K...., Esq.,  
Plaintiff's Attorney.

**296. Order vacating attachment (Wis. Stats. 1913 sec. 2744).**

[*Title.*]

The motion to vacate the writ of attachment herein having come on to be heard upon the affidavit, undertaking, writ of attachment and sheriff's return herein, and the complaint filed and served, after hearing L.... M...., Esq., for defendant, and O.... P...., Esq., for plaintiff;

ORDERED that the writ of attachment herein be wholly vacated; that defendant be allowed ..... dollars, the costs of this motion; and that the sheriff forthwith return all the property attached to the said defendant.

Dated ....., 19..

By the Court:

J.... K...., Circuit Judge.



**297. Traverse of attachment (Wis. Stats. 1913 sec. 2745).**

[Title.]

The above named defendant, for special answer to the affidavit for attachment herein denies the existence, at the time of making said affidavit, of the facts therein alleged as ground for attachment, that is to say, the defendant denies that at the time of making said affidavit he had absconded from this state, and denies that at that time he was about to abscond from this state.

C.... D....

By E.... F...., his attorney.

[Verification as in case of a pleading.]

**298. Finding for defendant on trial of traverse (Wis. Stats. 1913 sec. 2746).**

[Title.]

The issue raised by the defendant's traverse of the affidavit for attachment in this action coming on to be tried, and having been tried before me, J.... K...., circuit judge presiding, the court, after trial and hearing counsel, hereby finds and decides for the defendant upon such issue; and it is

ORDERED that the property attached in this action be forthwith delivered up to the defendant and said attachment dissolved.

And the defendant's costs upon the same are hereby taxed and allowed at ..... dollars.

By the Court:

J.... K...., Circuit Judge.

**299. Petition of intervening creditor to set aside prior attachment (Wisconsin).<sup>5</sup>**

[Title of original action.]

To the Circuit Court for ..... County:

THE PETITION of E.... F.... respectfully shows that on the .... day of ....., 19.., the above entitled action

<sup>5</sup>This proceeding by intervention is not authorized by express statute, but was suggested by the supreme court of Wisconsin in the case of McDonald v. Allen, 37 Wis. 108, and approved in Hawes v. Clement, 61

Wis. 152, 25 N. W. 21. See also Breslauer v. Geilfuss, 65 Wis. 377 27, N. W. 47; Nassauer v. Tschner, Id. 388, 27 N. W. 40; Meissner v. Meissner, 68 Wis. 336, 32 N. W. 51.

was commenced and a writ of attachment issued therein; that by virtue of such writ the sheriff of ..... county thereafter seized upon and attached certain property of the defendant described as follows [*insert description of property attached*]; that thereafter and on the .... day of ....., 19.., your petitioner, who is a creditor of the said defendant, commenced an action against the said defendant in said court and duly sued out a writ of attachment in his said action, whereby the said sheriff duly attached the property of said defendant hereinbefore described, subject however to the prior attachment in favor of the plaintiff in this action.

Petitioner further states that on the .... day of ....., 19.., judgment was duly rendered in the aforesaid action brought by your petitioner against said defendant for the sum of ..... dollars, damages and costs, and that thereafter, on the .... day of ..... 19.., an execution was duly issued out of said court upon said last named judgment and delivered to the said sheriff, by virtue of which he levied upon the same property above described.

Your petitioner further alleges that, as he is informed and verily believes, the writ of attachment issued in the action first above set forth and all proceedings thereon are illegal and void, and that the said levy of the said sheriff thereunder constitutes no lien upon the said property and against the lien of your petitioner, for the reason that [*here set forth the defect or illegality relied upon, by showing that the first attachment is void.*]

[*Or, if the first attachment is attacked on the ground of fraud*]: Your petitioner further alleges that the said first writ of attachment is illegal, fraudulent and void and constitutes no lien upon the said property as against the lien of your petitioner, for the reason that [*here state the facts showing that the claim is collusive or fraudulent*].

WHEREFORE your petitioner prays that the said first named writ of attachment be set aside and vacated, and that petitioner's lien upon the property above described be declared and established, and that the said property and its proceeds be applied to the satisfaction of his said judgment, and for such other relief as to the court may seem just.

E.... F....

[*Verification.*]

Petitioner.

**300. Order of hearing on said petition (Wisconsin).**

[*Title of original action.*]

Upon reading and filing the petition of E.... F.... praying that [*here state prayer of the petition*]; on motion of G.... H...., Esq., attorney for said petitioner;

IT IS ORDERED that the said petition be heard before this court at the ..... term on the .... day of ....., 19.., at the opening of court on that day or as soon thereafter as counsel can be heard, and that said plaintiff A.... B.... and the said sheriff of ..... county [*if other parties are adversely interested name them*] show cause at the said time and place why the said petition should not be granted, and that a copy of this order and the said petition be served on each of the said parties at least .... days before the time of said hearing, and until the further order of this court that all proceedings upon the said writ of attachment be stayed.

Dated ....., 19..

J.... K....,  
Circuit Judge.

**301. Order vacating attachment (Wisconsin).**

[*Title.*]

The petition of E.... F.... in the above entitled matter having come on to be heard, upon reading the same and the affidavit of L.... M.... in support thereof, and the affidavit of O.... P.... in opposition thereto, and upon the record and proceedings in said action, and after hearing counsel in support of and in opposition to said motion, and being fully advised in the premises;

It appearing that the writ of attachment heretofore issued in this action was and is insufficient and defective for the following reasons [*here state the facts showing the writ to be insufficient or void.*]

On motion of G.... H...., attorney for the petitioner,

IT IS ORDERED that the prayer of the said petition be and is hereby granted, and that the said writ of attachment and the levy made by virtue thereof be and the same are hereby set aside and vacated, and that the said sheriff of ..... county apply the property so attached [*or, the proceeds of the sale of said property so attached*] to the satisfaction of the judgment of the petitioner in the action

brought by said petitioner against said defendant C.... D...., in which judgment was rendered in favor of said petitioner upon the .... day of ....., 19.., after deducting the legal costs, fees, and charges of said sheriff as allowed by law.

By the Court:

J.... K....,  
Circuit Judge.

### 302. Order awarding issues on said petition (Wisconsin).

[*Title of original action.*]

[*Proceed as in last preceding form to the close of recitals, and continue as follows:*]

It appearing that certain issues have arisen by the allegations of said petition proper for trial by a jury; upon motion of G.... H...., attorney for the said petitioner;

IT IS ORDERED that the said petitioner be made a party defendant herein for the purpose of seeking the relief prayed for by said petition, and that the following issues arising between the said petitioner and the said plaintiff [*and name any other adverse party*] be and are hereby awarded:

1st. [*Here state issues to be tried, as for instance*]: Was this action and the writ of attachment therein fraudulent and void as against the petitioner as a creditor of said defendant?

2nd. [*Briefly state any other issues to be tried.*]

It is further ordered that the said issues be set for trial by jury on the .... day of ....., 19..

By the Court:

J.... K....,  
Judge.

### 303. Petition for intervention by third person whose property is attached.<sup>6</sup>

[*Title of original action.*]

To the Circuit Court for ..... County.

THE PETITION of L.... M.... respectfully shows that on the day of ....., 19.., the above entitled action was

<sup>6</sup>This form is suggested to meet the provisions of Wis. Stats. 1913 sec. 2751a. The order of hearing, order vacating attachment and order

awarding issues on this petition may be easily adapted from the three immediately preceding forms.

commenced and a writ of attachment issued therein, by virtue of which the sheriff of . . . . . county seized and attached the following described property as the property of the defendant [*insert description of property*]; that in truth and in fact the said property so attached was and is not the property of the defendant, nor has he any interest therein, but was and is the property of this petitioner [*or if the claimant has not the absolute but only a qualified title or lien state the fact as it is*] and the same is unlawfully held by the said sheriff upon the said writ of attachment.

WHEREFORE your petitioner prays that he be allowed to intervene in this action and that the alleged lien upon the said property under the said writ of attachment be removed and discharged, and for such further or other relief as shall seem just.

L. . . . M. . . . ., Petitioner.

[*Verification as in case of a pleading.*]

**304. Affidavit for attachment to enforce log lien (Wis. Stats. 1913 sec. 3332).**

[*Title.*]

[*Venue.*]

A. . . . B. . . . , being duly sworn, says that he is the plaintiff in the above entitled action [*or if the affidavit is made by plaintiff's agent or attorney*]: E. . . . F. . . . , being duly sworn, says he is the agent [*or, attorney*] for the plaintiff in the above entitled action and makes this affidavit on behalf and by authority of said plaintiff.

That said defendant, C. . . . D. . . . , is indebted to the plaintiff in the sum of . . . . . dollars over and above all legal set-offs and that the same is due for labor and services performed by said plaintiff for and at the request of said defendant, C. . . . D. . . . , on and between the . . . . day of . . . . ., 19. . . , and the . . . . day of . . . . ., 19. . . , in cutting and hauling the following described logs and timber [*describe same*] [*or, in sawing and manufacturing logs, describing same*].

That on the . . . . day of . . . . ., 19. . . , the plaintiff duly made, signed, verified and filed in the office of the clerk of the circuit court in and for the county of . . . . ., his petition for a lien upon said logs and timber, duly setting forth in said



claim the nature of the debt or demand for which the lien is claimed, and a description of the property as above given and therein claimed a lien thereon pursuant to law.

That affiant makes this affidavit for the purpose of obtaining a writ of attachment in this action for the enforcement of such lien.

[*If affidavit is made by agent or attorney, add*]: That this affiant makes this affidavit upon his personal knowledge of the facts, [or, upon information and belief] derived from [here state the grounds of his knowledge and belief, as for instance, admissions made by said defendant, C.... D...., to this affiant. See *Wiley v. Aultman & Co.*, 53 Wis. 560; 11 N. W. 32].

A.... B....,  
[or, E.... F....].

[*Jurat.*]

[*The ordinary form of undertaking in attachment may be used.*]

### 305. Writ of attachment to enforce log lien (Wisconsin).

[*Title.*]

THE STATE OF WISCONSIN

to the Sheriff of the County of.....:

Greeting;

YOU ARE HEREBY commanded to attach the following goods and chattels, to-wit [*here describe the logs, lumber, etc.*], or so much thereof as shall be sufficient to satisfy the sum of ..... dollars, with interest, costs and disbursements of suit, and hold the same subject to further proceedings in the above entitled action; and of this writ make due return to said court, according to law.

Witness, the Hon. J.... K...., presiding  
judge of said circuit court for the county  
of ....., at the court house in the city of  
....., in said county, this .... day of  
....., 19..

[SEAL]

R.... S....,  
Clerk.

E.... F....,  
Plaintiff's Attorney,  
....., Wis.

**306. Affidavit of intervenor who seeks to defend log lien action (Wis. Stats. 1913 sec. 3340a).**

[Title.]

[Venue.]

M.... N...., being first duly sworn, says that he is the owner of [or, has an interest in, *specifying the nature of the interest*] the following described logs, timber [or other property, *describing it*] upon which a lien is claimed in this action; and that he verily believes that said claim for lien is unjust and invalid.

M.... N....

[Jurat.]

**307. Undertaking by intervenor after judgment to stay execution in log lien action (Wis. Stats. 1913 sec. 3340b).**

[Title.]

WHEREAS, judgment was rendered in the above entitled action, on the .... day of ....., 19.., in said court adjudging a lien in favor of the plaintiff upon certain property, to-wit [*here describe the same*], for the sum of ..... dollars, damages and costs.

And, whereas, M.... N.... has filed an affidavit with the clerk of said court in said action to the effect that he is the owner of said property [or, an interest in said property], and that he verily believes that said claim for lien is unjust and invalid, and has appealed to the supreme court of said state from said judgment;

NOW, THEREFORE, in order to stay execution on said judgment, we, M.... N...., as principal, and N.... O.... and O.... P.... of ....., do hereby undertake pursuant to law, in the sum of ..... dollars that if the plaintiff establish his right to a lien on such property, we will pay the amount of the judgment in his favor with costs.

Dated this .... day of ....., 19..

M.... N....

N.... O....

O.... P....

[Venue.]

N.... O.... and O.... P...., being first duly sworn, each for himself says that he is a resident and freholder of

the state of Wisconsin, and resides as stated in the foregoing undertaking signed by him. That he is worth the sum of . . . . . dollars over and above all his debts and liabilities, in property within the state of Wisconsin, not by law exempt from execution.

N.... O....  
O.... P....

[*Jurat.*]

**308. Complaint in action to enforce log lien (Wis. Stats. 1913 secs. 3331-3339).**

[*Title.*]

The plaintiff complaining of the defendants alleges:

I. That on and between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., the plaintiff, at request of the defendant, C.... D...., performed labor and services in cutting and hauling [*or otherwise specify the kind of labor*] certain logs and timber at . . . . . for . . . . days, and for which said defendant, C.... D...., promised and agreed to pay the plaintiff . . . . . dollars per day [*or otherwise state contract*], and that the said defendant, C.... D...., is personally indebted therefor to the plaintiff in the sum of . . . . . dollars, which sum is now due and unpaid.

II. That the logs and timber upon which said labor and services were performed, are described as follows [*describe the same as in claim for lien*].

III. That the last day of doing said labor and services was the . . . . day of . . . . ., 19.., and on the first day of . . . . ., 19.., thereafter, the plaintiff duly filed in the office of the clerk of the circuit court in and for . . . . . county, his claim for a lien upon said logs and timber for said amount, which claim was made, signed and verified by plaintiff and set forth the nature of the debt for which a lien was claimed, the amount claimed to be due, a description of the property on which the lien is claimed and an averment that this petitioner claims a lien thereon pursuant to law.

IV. That the defendants, X.... Y.... and Y.... Z.... claim to own or have some interest in said property and are therefore made defendants in this action, but that said interest, if any, is subject to the plaintiff's said lien as plaintiff is informed and verily believes.

V. That four months have not elapsed since the filing of plaintiff's said claim for a lien.

WHEREFORE plaintiff demands judgment against said defendant, C.... D...., for the sum of ..... dollars and interest from ....., 19.., with the costs and disbursements of this action, and prays that the same be adjudged a lien upon the logs and timber herein above described, pursuant to the provisions of chapter 143 of the statutes.

E.... F....,

[Add Verificaton.]

Plaintiff's Attorney.

309. **Affidavit for attachment against resident (Cal. C. C. P. 1906 sec. 538).**

[Title.]

[Venue.]

A.... B...., being duly sworn says that he is the plaintiff in the above entitled action; that the defendant C.... D.... is indebted to said plaintiff in the sum of ..... dollars over and above all legal set offs and counter claims upon an express [or implied] contract for the direct payment of money; to-wit: [*here set forth concisely the contract as for example: a certain promissory note made, executed and delivered by the defendant to the plaintiff's order on the .... day of ....., 19.., payable one year after the date thereof for the sum of ..... dollars, no part whereof has been paid*]\*; that such contract was made [or is payable] in this state and that the payment of the same as not been secured by any mortgage or lien upon real or personal property or any pledge of personal property [*or if originally so secured state the facts and add, that such security has without any act of the plaintiff (in case the security was given to another add or the person to whom the security was given) become valueless.*] And deponent further says that the said sum for which this attachment is asked is an actual bona fide existing debt due and owing from defendant to the plaintiff; that said attachment is not sought and said action is not prosecuted to hinder, delay or defraud any creditor or creditors of the said defendant.

[Jurat.]

A.... B....

[*If the affidavit is made by another on behalf of the plaintiff commence as follows: E.... F.... being duly sworn says that*

he is attorney for (or agent of) the plaintiff in this action and makes this affidavit in his behalf and is hereunto duly authorized; that the defendant C.... D.... is indebted, etc., *proceeding as above to the end.*]

**310. The same against non-resident (California).**

*[Proceed as in last preceding form omitting however the allegations to the effect that the contract was made or payable in the state and the allegations as to security and inserting instead thereof, that the defendant is a non-resident of this state to-wit, a resident of the state of .....]*

**311. The same in a test action (California).**

*[Title.]*

*[Venue.]*

A.... B.... being duly sworn deposes and says that he is the plaintiff in the above entitled action and that the same is based upon cause of action arising out of tort existing in plaintiff's favor against said defendant and that said defendant is not a resident of this state; that said plaintiff's cause of action is one to recover ..... dollars as damages arising from an injury to property of the plaintiff in this state in consequence of the negligence [*or fraud, or other wrongful act naming it*] of the defendant to-wit: [*here state concisely the negligence or other wrongful act complained of*].

*[Add a legation that the attachment is not sought to hinder, delay or defraud creditors as in the immediate by preceding forms.]*

**312. Undertaking for attachment (Cal. C. C. P. 1906 sec. 539).**

*[Title.]*

WHEREAS, the above-named plaintiff has commenced, or is about to commence, an action in the superior court of the county of ....., state of ....., against the above-named defendant, upon a contract for the direct payment of money, claiming that there is due to said plaintiff from said defendant, the sum of ..... dollars, or thereabout, and is about to apply for an attachment against the property of said defendant, as security for the satisfaction of any judgment that may be recovered therein:



NOW, THEREFORE, we, the undersigned residents of the county of . . . . ., state of California, in consideration of the premises and of the issuing of said attachment, do jointly and severally undertake in the sum of . . . . . dollars, and promise to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of said attachment, not exceeding the sum specified in this undertaking, of . . . . . dollars; and that if said attachment should be discharged on the ground that the plaintiff was not entitled thereto (under section 537 of the California Code of Civil Procedure), the plaintiff will pay all damages which the defendant may have sustained by reason of said attachment, not exceeding the sum specified in said undertaking of . . . . . dollars.

Dated at . . . . . this . . . . . day of . . . . ., 19..

E.... F....  
G.... H....

[*Venue.*]

E.... F.... and G.... H...., whose names are subscribed as the sureties to the above undertaking, being severally duly sworn, each for himself, says: That he is a resident and freholder [*or* householder] within the said county of . . . . ., state of California, and that he is worth the sum in the said undertaking specified as the penalty thereof, over and above all his debts and liabilities, in property within this state, exclusive of property exempt from execution.

E.... F....  
G.... H....

[*Jurat.*]

### 313. Writ of attachment (Cal. C. C. P. 1906 sec. 540).

[*Title.*]

THE PEOPLE of the State of California  
to the Sheriff of the County of . . . . .,  
Greeting:

WHEREAS, the above-entitled action was commenced in the superior court of the state of . . . . ., in and for the county of . . . . ., by the plaintiff in the said action, to recover from the defendant in the said action the sum of

..... dollars, besides interest at the rate of ..... per cent. per month, from the .... day of ....., 19.. and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law:

NOW, we do, therefore, command you, the said sheriff, that you attach and safely keep all the property of the said defendant C.... D.... within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above mentioned; unless the said defendant give you security, by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

WITNESS, Hon. J.... K....., judge of the said superior court, this .... day of ....., 19..

J.... K....., Judge

ATTEST my hand and the seal of said court  
the day and year last above written.

[SEAL]

C.... D....., Clerk

By E.... F....., Deputy Clerk.

**314. Sheriff's notice indorsed on writ (Cal. C. C. P. 1906 sec. 540).**

SHERIFF'S OFFICE.

City and County of San Francisco,

....., 19..

To E.... F....

PLEASE TAKE NOTICE, that all moneys, goods, credits, effects, debts due or owing, or any other personal property, and all stocks or shares, or interest in stocks or shares, of the ..... company, in your possession or under your control, belonging to the within-named defendants, or either of them are attached by virtue of a writ, of which the within is a copy, and you are notified not to pay over or transfer the same to any one but myself.

Please furnish a statement.

C.... D....., Sheriff

By E.... F....., Deputy Sheriff.

**315. Sheriff's return on attachment of non-leviable assets (Cal. C. C. P. 1906 sec. 514).**

SHERIFF'S OFFICE.

Of the City and County of San Francisco,  
....., 19..

BY VIRTUE of the annexed writ, I duly attached all moneys, goods, credits, effects, debts due or owing, and all other personal property [*or, all stocks or shares, or interest in stocks or shares, of the ..... company*], in the possession or under the control of the parties hereinafter named, by serving upon each of them respectively, personally, at ..... county of ....., at the times set opposite their respective names, a copy of said writ, with a notice in writing that such property was attached in pursuance of said writ, and not to pay over or transfer the said property to anyone but myself. Statement demanded. [*Annex names of parties served, time of service and answers of parties served.*]

S.... T...., Sheriff  
By D.... S...., Deputy Sheriff.

**316. Sheriff's return on attachment of real or personal property (Cal. C. C. P. 1906 sec. 514).**

[*Venue.*]

I HEREBY CERTIFY and return, that by virtue of the within writ of attachment, I have on this .... day of ..... 19.., at the city of ....., in said county, levied on all of the right, title, and interest of the within named defendant, C.... D...., in and to the following described real [*or, personal*] property, to-wit: [*Here insert accurate description of the real estate, or give an inventory of the personal property attached.*]

WITNESS my hand this .... day of ....., 19..  
E.... F....,  
Sheriff of ..... County  
By G.... H...., Deputy.

**317. Notice of motion to discharge attachment for irregularity (Cal. C. C. P. p. 1906 sec. 556).**

[*Title.*]

To L.... M...., Attorney for Plaintiff:

PLEASE TAKE NOTICE, that on an affidavit, of which

the within is a copy [or, of which a copy is annexed], and on all the papers filed and served in this action, the undersigned will move the court, at . . . . ., on the . . . . day of . . . . ., 19.., at . . . . . o'clock in the . . . . noon, or as soon thereafter as counsel can be heard, to discharge the attachment in this action [*if for irregularity, add: upon the grounds, among others—specifying the irregularity*], and for such other or further order as may be just.

[Date.]

C. . . . D. . . .

Defendant's Attorney.

**318. Notice of motion to release attachment on giving undertaking (Cal. C. C. P. 1906 secs. 554 and 555).**

[Title.]

To L. . . . M. . . ., Attorney for Plaintiff:

PLEASE TAKE NOTICE, that the undersigned will move this court, at . . . . ., on the . . . . day of . . . . ., 19.., at . . . . o'clock in the . . . . noon, or as soon thereafter as counsel can be heard, to discharge the attachment in this action, on giving due security.

[Date.]

C. . . . D. . . .

Defendant's Attorney

**319. Undertaking for release of attachment (Cal. C. C. P. 1906 sec. 555).**

[Title.]

J. . . . K. . . ., the sheriff of the county of . . . . ., in this state, having, under and by virtue of a writ of attachment issued in this action, attached property of C. . . . D. . . ., defendant in the action, which property is described as follows, namely: [*Here describe the same*]; and the defendant having applied to this court, upon due notice to the plaintiff, for an order to release said property from said attachment, and the court having required, before such order was made, an undertaking on behalf of defendant, and having fixed the amount of said undertaking at . . . . . dollars:

NOW, THEREFORE, in consideration of the premises, and for the purpose of the making of said order, we, E. . . . F. . . ., and G. . . . H. . . ., residents and freeholders [*or householders*] in the county of . . . . ., state of California,

undertake, on behalf of said defendant, and are bound to the plaintiff in the sum of . . . . . dollars, and promise the plaintiff that, in case the plaintiff recover judgment in said action, the defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment; or, in default thereof, that the defendant, and we, his sureties, will, on demand, pay to the plaintiff the full value of the property released. [*If the value of the property is fixed or agreed upon, insert: "to-wit: . . . . .dollars."*]

[Date.]

E.... F....

G.... H....

**320. Order releasing attachment on giving undertaking**  
(Cal. C. C. P. 1906 sec. 555).

[Title.]

C.... D...., the defendant in this action, having applied for the release of property attached therein, and an undertaking having been given in behalf of C.... D...., defendant in this action, as required by the court, to obtain an order for the release from attachment of the property of said defendant, C.... D...., attached under a writ of attachment issued in this action, and the sureties to such undertaking having justified [*or no exception to the sufficiency of said sureties having been made*]:

IT IS ORDERED, that the following described property of the defendant, C.... D...., namely: [*Here describe the same*], which has been attached under writ of attachment issued herein, be and the same is hereby released from said attachment.

[Date.]

J.... K....

Judge.

**321. Order discharging attachment for irregularity**  
(Cal. C. C. P. 1906 sec. 558).

[Title.]

It appearing to the court that the writ of attachment in this action was improperly [*or irregularly*] issued [*or both improperly and irregularly issued*], for the following reasons: [*Here state the same briefly.*]



IT IS ORDERED, that said writ of attachment be and the same is hereby discharged.

[Date.]

J.... K....,  
Judge.

**322. The same, with directions as to proceeds of property sold (Cal. C. C. P. 1906 sec. 558).**

[Title.]

On the annexed notice of motion [and the affidavits of L.... M.... and N.... O....], and on motion of G.... H...., for defendant:

IT IS ORDERED, that the attachment issued [or, granted] against the property of the above-named C.... D...., on the .... day of ....., 19.., be discharged; and that any and all proceeds of sales and moneys by said sheriff collected, and all the property attached remaining in his hands, be delivered and paid by him to the defendant or his agent, and released from the attachment.

[Date.]

J.... K....,  
Judge.

**323. Notice of attachment of real property (Cal. C. C. P. 1906 sec. 542).**

[Title.]

NOTICE is hereby given that, under and by virtue of a writ of attachment issued out of the above entitled court in the above entitled action, of which the annexed writ is a true copy, I have this day attached and levied upon all the right, title, claim and interest of C.... D.... the defendant above named [or in case of two or more defendants name all of them as C.... D...., E.... F.... and G.... H.... defendants above named or either of them] of, in and to the following described real estate, standing on the records of ..... county, state of California, in the name of said C.... D.... [or as the fact may be] and particularly described as follows: [Insert description of real estate attached.]

Dated ..... 19..

L.... M....  
Sheriff ..... County.

**324. Affidavit of third person claiming attached property (Cal. C. C. P. 1906 sec. 549-589).**

[Title.]

[Venue.]

E.... F...., being duly sworn, says that by virtue of the writ of attachment in this action the sheriff of said county on the .... day of ....., 19.., seized as the property of the defendant C.... D.... the following described property: [Insert description.]

Affiant further says that the said property was at the time of said seizure, and still is the property of this affiant, and that the ground of his title thereto is as follows: [Here state grounds of title, e. g. that the said defendant sold and delivered said property for value to affiant on the .... day of ....., 19.., and before the levy of said attachment.] Affiant further says that the value of said property is ..... dollars, and that this affidavit is made for the purpose of obtaining possession of said property from the said sheriff.

E.... F....

[Jurat.]

To L.... M...., Esq., Sheriff of ..... County.

TAKE NOTICE that I claim title to the property described in the above affidavit and demand possession thereof.

E.... F....

[Date.]

**325. Indemnity bond by plaintiff to sheriff (Cal. C. C. P. 1906 sec. 549, 589).**

[Title.]

KNOW ALL MEN by these presents, that we, A.... B...., as principal, and E.... F.... and G.... H...., as sureties, are held and firmly bound unto J.... K...., sheriff of the county of ....., state of California, in the sum of ..... dollars, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Scaled with our seals, and dated the .... day of ....., 19..

WHEREAS, under and by virtue of a writ of attachment, issued out of the superior court of the state of California, in and for the county of . . . . ., in an action wherein the said A. . . . B. . . . was plaintiff and C. . . . D. . . . was defendant, against said defendant, directed and delivered to said J. . . . K. . . . sheriff of the county of . . . . ., the said sheriff was commanded to attach and safely keep all the property of said defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand; amounting to . . . . . dollars, as therein stated, and the said sheriff did thereupon attach the following described goods and chattels [*describe chattels*]:

And whereas, upon the taking of said goods and chattels by virtue of the said writ, L. . . . M. . . . claimed the said goods and chattels as his property;

And whereas, the said plaintiff claims that said property is of the value of . . . . . dollars and requires of said sheriff that he shall retain said property under such attachment and in his custody.

NOW, THEREFORE, the condition of this obligation is such, that if the said A. . . . B. . . ., E. . . . F. . . . and G. . . . H. . . ., their heirs, executors, and administrators, shall well and truly indemnify and save harmless the said sheriff, his heirs, executors, and administrators, of and from all damages, expenses, costs, and charges, and against all loss and liability which he, the said sheriff, his heirs, executors or administrators, shall sustain or in any wise be put to, for or by reason of the attachment, seizing, levying, taking or retention by the said sheriff, in his custody, under said attachment, of the said property claimed as aforesaid, then the above obligation to be void,; otherwise to remain in full force and virtue.

Dated . . . . ., 19..

A. . . . B. . . .  
E. . . . F. . . .  
G. . . . H. . . .

[*Justification, if required by sheriff.*]

**326. Undertaking to obtain release of partnership property, one partner's interest alone being attached (California).**

[*Title.*]

WHEREAS, the plaintiff above named has sued out a writ of attachment against the defendant, C.... D...., in this action, by virtue of which the sheriff of ..... county has levied upon certain personal property described as follows: [*Here insert description of property.*]

And whereas, it appears, by the affidavit of one L.... M.... [*or, if other affidavits have been filed upon the hearing, recite them*] that the property so levied upon is the property of the firm composed of the said C.... D.... and L.... M...., and that the interest of one of the partners, to-wit C.... D.... only has been levied upon;

And whereas, the said L.... M.... has made application to the court for an order to discharge the said attachment as to said personal property:

NOW, THEREFORE, we, L.... M...., as principal, and P.... Q.... and R.... S...., as sureties, hereby undertake, promise and agree to and with the said sheriff, in the sum of ..... dollars [*the amount of the undertaking is to be fixed by the court or judge*], that they will pay to the said sheriff on demand the amount of the judgment rendered against said ....., principal above-named, but not exceeding the amount of the interest of the said C.... D.... in the said partnership property, if judgment shall be rendered in the above-entitled action in favor of the plaintiff and against the said defendant, the amount of such interest to be determined by reference or otherwise, as the court may direct.

Dated ....., 19..

L.... M....

P.... Q....

R.... S....

[*Add justification of sureties.*]

### 327. Notice of motion to extend attachment lien (California).

[*Title.*]

PLEASE TAKE NOTICE, that on the .... day of ....., 19.., (the same not being more than sixty nor less than five days prior to the date of the expiration of the lien of attachment issued and levied out of said court and cause), at the hour of .... o'clock in the .... noon of said day, or as soon thereafter as counsel can be heard, in the courtroom of said above-named court, the undersigned will move

the said court to extend the time of said attachment lien for the period of two years from the date on which the said original lien will expire.

N.... O....,

Attorney for Plaintiff.

To C.... D...., defendant, and L.... M...., his attorney.

### 328. Order extending attachment lien (California).

[Title.]

Upon motion of N.... O...., Esq., attorney for plaintiff, (made not more than sixty days nor less than five days prior to the date of the expiration of the lien of attachment issued and levied out of said court and cause), and good cause appearing therefor, upon due and legal notice having been given:

IT IS HEREBY ORDERED, that the lien of said attachment be extended for a period of two years from the date of the expiration of the original lien of said attachment, to-wit, from the date of the expiration of the original lien of said attachment, to-wit, from the .... day of ....., 19.., continuing on to the .... day of ....., 19..

Dated this .... day of ....., 19..

J.... K....,

Judge of said court.

### 329. Release of real property from attachment (California).

[Title.]

THIS IS TO CERTIFY, that the certain attachment, issued out of the ..... court of the county of ....., state of California, on the .... day of ....., 19.., in the action in which A.... B.... is plaintiff and C.... D.... is defendant, and levied on the .... day of ....., 19.., notice of which levy was on the .... day of ....., 19.., recorded in book ....., of attachment records, at page .... et seq., together with the debt thereby secured, is paid, fully satisfied, and discharged.

Witness my hand and seal, this .... day of ....., 19..

[Signed by plaintiff, by his attorney,  
or by the attaching officer.]

[Acknowledgment as in case of a deed.]



**330. Affidavit for attachment (Ariz. R. S. 1913 sec. 1394).**

[Title.]

[Venue.]

A.... B...., being duly sworn, says: that he is the plaintiff in the above entitled action, and that the defendant is indebted to plaintiff, upon an express [or implied] contract for the direct payment of money, and such contract was made [or is payable] in the state of Arizona, and that the payment of same is not fully secured by any mortgage or lien upon real or personal property, or any pledge of personal property, [or that the payment of the same was originally secured by mortgage upon certain personal property but that such security has without any act of the plaintiff or the person to whom the security was given become valueless;] that the character of said indebtedness is as follows, to-wit, one certain promissory note [*fully describing it*] \* [*In case the ground of the attachment be that the defendant is a non-resident or is a foreign corporation doing business in the state or other ground stated in subs. 2, 3 or 4 of section 1394 omit the allegations as to security and that the contract was made or payable in the state and insert an allegation of the ground relied on in the words of the statute*].

That the same is due plaintiff over and above all legal set-offs or counter-claims, and that demand has been made for the payment of the amount due.

That the attachment is not sought for a wrongful or malicious purpose, and that the action is not prosecuted to hinder or delay any creditor of the defendant.

[Jurat.]

A.... B....

[*If the affidavit be made by an agent state the fact as indicated in Form 309.*]

**331. The same, for debt not due (Ariz. R. S. 1913 sec. 1395).**

[*Proceed as in last preceding form to the \* and continuing*]:

That there are no legal set-offs or counter-claims against the said demand but that the same is not yet due.

That the defendant is about to remove permanently out of the state and has refused to secure the said debt, [or, that the defendant has secreted his property for the purpose of defrauding his creditors, or state any one of the separate grounds

set forth in sec. 1395 Ariz. R. S., if two grounds are stated they should be stated conjunctively].

A.... B....

[*Jurat.*]

[If the affidavit be made by an agent see Form 309.]

[If it is desired to traverse the affidavit see Form 297.]

**332. Bond on attachment (Ariz. R. S. 1913 secs. 1399, 1400).**

[*Title.*]

We, the undersigned A.... B.... as principal and E.... F.... and G.... H.... as sureties, acknowledge ourselves bound to pay to C.... D.... the defendant above-named the sum of ..... dollars, conditioned that the above bounden A.... B.... plaintiff in attachment against the said C.... D.... defendant will prosecute his said suit to effect, and that he will pay all such damages and costs as may be sustained by the said C.... D.... by reason of the wrongful suing out of said attachment.

Witness our hands this .... day of ....., 19..

A.... B....

E.... F....

G.... H....

[*Venue.*]

E.... F.... and G.... H.... the sureties in the within undertaking, being duly sworn, each for himself and not one for the other, says that he is worth the sum of .... dollars, in property within the state of Arizona over and above all his just debts and liabilities, and exclusive of all property exempt by law from execution and forced sale, and that he is a resident and free holder within the state of Arizona.

E.... F....

[*Jurat.*]

G.... H....

**333. Writ of attachment (Ariz. R. S. 1913 sec. 1404).**

[*Title.*]

THE STATE OF ARIZONA,

To the Sheriff or any Constable of ..... County,  
Greeting:

WE COMMAND YOU, that you attach, forthwith, so much of the property of C.... D.... if to be found in your

county, as shall be of value sufficient to make the sum of . . . . . dollars and the probable costs of suit, to satisfy the demand of A. . . . B. . . . , and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before this court, and that you make return of this writ showing how you executed the same.

Given under my hand and the seal of the Court this . . . . .

[SEAL]

day of . . . . ., A. D. 19..

J. . . . K. . . . , Clerk.

By L. . . . M. . . . , Deputy Clerk.

**334. Indemnity bond to sheriff (Ariz. R. S. 1913 sec. 1407).**

KNOW ALL MEN by these presents, that we A. . . . B. . . . as principal, and E. . . . F. . . . and G. . . . H. . . . as sureties, are held and firmly bound unto J. . . . K. . . . , Esq., sheriff of the county of . . . . . , state of Arizona, in the sum of . . . . . dollars, lawful money of the United States of America, to be paid to the said J. . . . K. . . . his certain attorney, executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed with our hands and dated the . . . . day of . . . . . A. D. 19. .

WHEREAS, under and by virtue of a writ of attachment issued out of the . . . . . court of the . . . . . county, state of Arizona, in an action wherein the said principal obligor A. . . . B. . . . is plaintiff, and C. . . . D. . . . is defendant, against the said defendant, the said J. . . . K. . . . as sheriff aforesaid, did levy upon and take into his possession the following described property: [*here describe property attached*] and whereas said property is claimed by others and the plaintiff, notwithstanding such claim, requires the said sheriff to retain the same in his custody;

NOW THEREFORE, the condition of this obligation is such, that if the said obligors, or either of them, shall well and truly indemnify and save harmless the said J. . . . K. . . . of and from all damages, expenses, costs and charges, and

against all loss and liability which he, the said J.... K.... shall sustain or in anywise be put to, for or by reason of the levy, taking, sale, or retention by the said J.... K.... in his custody under said writ of the said property claimed as aforesaid, then this obligation to be void, otherwise to remain in full force and virtue.

Witness our hands and seals this .... day of ..... A. D. 19..

A.... B....

E.... F....

G.... H....

[*Venue.*]

E.... F.... and G.... H...., the sureties in the above undertaking being duly sworn, each for himself and not one for the other, says that he is worth the sum of ..... dollars, in property within the state of Arizona, over and above his just debts and liabilities, exclusive of property exempt by law from execution and forced sale and that he is a resident and free holder within the state of Arizona.

E.... F....

G.... H....

[*Jurat.*]

### 335. Affidavit of third person claiming title to attached property (Ariz. R. S. 1913 secs. 1411, 1648).

[*Title.*]

[*Venue.*]

L.... M...., being duly sworn, says that by virtue of a writ of attachment issued in the above entitled action on the .... day of ..... 19.. and delivered to J.... K.... as sheriff of ..... county the said J.... K.... has heretofore levied on and now retains in his custody as the property of the defendant C.... D.... the following described personal property, to-wit: [*here describe property*]. Affiant further says that the said property so attached is not the property of said C.... D.... but is in fact the property of this affiant and that affiant now makes claim upon said sheriff for the delivery to him (this affiant) of said property, and all thereof. That this claim is made in good faith.

L.... M....

[*Jurat.*]

[*This affidavit is to be presented to the sheriff.*]

**336. Bond given by third person claiming title to attached property (Ariz. R. S. 1913, sec. 1653).**

WHEREAS, by virtue of a writ of [*here describe the writ*], issued out of the ..... court in favor of A.... B...., versus C.... D...., and tested on the .... day of ....., A. D. 19.., [*here insert name and title of officer seizing*], has seized and taken the following described personal property, viz.: [*here describe the property*], the value of which property has been assessed by said officer at ..... dollars.

And, whereas L.... M.... has claimed said property and presented to said officer his oath in writing that such claim is made in good faith;

NOW, THEREFORE, we, L.... M...., as principal and E.... F.... and G.... H...., as sureties acknowledge ourselves bound to pay to the said A.... B.... the sum of ..... dollars, being double the value of said property, conditioned that the said L.... M...., in case he fails to establish his right to said property, will return the same to said [*insert name of officer*], or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase or fruits of the same from the date of this bond, and costs, or, in case he fails to return said property and pay for the use, hire, increase or fruits thereof, that he will pay the plaintiff for the value of the same, with legal interest from date, and shall also pay all damages and costs that may be awarded against him.

Witness our hands, this, the .... day of ..... A. D. 19..

	L.... M....
Approved:	E.... F....
S.... T....	G.... H....
Sheriff [ <i>or constable</i> ] ..... County.	

**337. Execution in attachment (Ariz. R. S. 1913, sec. 1423).**

[*Title.*]

STATE OF ARIZONA

To the sheriff of ..... county [*or to the constable* ..... precinct, ..... county], Arizona,

Greeting:

WHEREAS, on the .... day of ....., 19.., a judgment



was duly entered in the above entitled cause in the above-named court, directing a sale of certain property to satisfy such judgment, which judgment is in words and figures following, to-wit: [*Here insert a copy of the judgment*].

YOU ARE THEREFORE COMMANDED to make sale of the property described in said judgment, and directed to be sold, in the manner provided by law for the sale of like property under execution.

Witness, the Hon. J. . . . K. . . .  
 judge of said court,  
 . . . . . in said county, the  
 . . . . day of . . . . ., 19..  
 E. . . . F. . . .,  
 Plaintiff's Attorney.

[SEAL OF COURT]

[*Attested as other writs.*]

**338. Affidavit for attachment, bond, writ and subsequent papers (Ark. Dig. of Stats. 1904 sec. 345 et seq.).**

[*As forms have been prescribed by statute in Arkansas for the various papers to be used in attachment proceedings, it is not deemed necessary to insert them here. They will be found in the "Forms in Civil Cases" appended to the Arkansas Digest of Statutes 1904, Form 19 to Form 31 inclusive.*]

**339. Affidavit for attachment (Colo. Code Ann. 1911 sec. 98).**

[*Title.*]

[*Venue.*]

[*Proceed as in Form 309 to the \* and continuing as follows*]; that the defendant is not a resident of this state, [*or that the defendant is a foreign corporation; or state any other of the grounds for attachment set forth in sec. 98 of the Code of Colorado; if two grounds are stated they should be alleged conjunctively*]. And deponent further says that the said sum for which this attachment is asked is an actual bona fide existing debt due and owing from defendant to the plaintiff; that said attachment is not sought and said action is not prosecuted to hinder, delay or defraud any creditor or creditors of the said defendant.

[*Jurat.*]

A. . . . B. . . .

[*If the affidavit be made by an agent the proper allegation to that effect will be found at the foot of Form 309.*]

**340. Undertaking on attachment (Colo. Code Ann. 1911 sec. 106).**

[*Title.*]

WE, THE UNDERSIGNED residents of the county of . . . . ., state of Colorado, in consideration of the issuing of a writ of attachment in the above entitled action, do jointly and severally undertake in the sum of . . . . . dollars, and promise to the effect, that if the defendant C. . . . D. . . . recover judgment in the above entitled action, or if the said court shall finally decide that the said plaintiff was not entitled to an attachment in said action, the said plaintiff will pay all costs that may be awarded to the defendant C. . . . D. . . . and all damages which he may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of . . . . . dollars.

Dated this . . . . day of . . . . ., 19..

E. . . . F. . . .  
G. . . . H. . . .

[*Venue.*]

E. . . . F. . . . and G. . . . H. . . ., the sureties who signed the foregoing undertaking, being each duly sworn, each for himself says that he is a resident and freeholder in the county of . . . . . and that he is worth the sum named in said undertaking as the penalty thereof, viz.: . . . . . dollars over and above his just debts and liabilities in property within this state not by law exempt from execution.

E. . . . F. . . .  
G. . . . H. . . .

[*Jurat.*]

**341. Writ of attachment (Colo. Code Ann. 1911 sec. 108).**

[*Title.*]

THE PEOPLE of the State of Colorado  
to the Sheriff of the said county of . . . . .,  
Greeting:

WHEREAS, the above entitled action has been commenced in the . . . . . court in and for the county of . . . . . by the above named plaintiff to recover from the defendant C. . . . D. . . . in the said action, the sum of . . . . . dollars, lawful money of the United States, besides interest at the rate of . . . . . per cent. per . . . . from the . . . . day of . . . . ., 19.., and costs of suit; and the necessary affidavit and un-

dertaking herein having been filed as required by law.

NOW, we do therefore command you, the said sheriff, that you serve a copy hereof on the above defendant if he be found in your county, and also attach and safely keep all the property of said defendant C. . . . D. . . . within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above mentioned, including costs, unless the said defendant deposit the amount or give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demands, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking; and hercof make due legal service and return.

[SEAL]

WITNESS, J. . . . K. . . ., Clerk  
of said court, and the seal  
thereof hereto affixed at . . . . .  
aforesaid, this . . . . day of  
. . . . ., 19. .

J. . . . K. . . ., Clerk.  
By L. . . . M. . . .,  
Deputy.

**342. Bond for release of attachment (Colo. Code Ann. 1911 sec. 123).**

[Title.]

WHEREAS, the above named plaintiff has sued out an attachment in the above entitled action against the above named defendant, by virtue of which said writ of attachment the following described property, to-wit: [*describe property*] of the value of . . . . . dollars has been seized and attached; and whereas, the said defendant is desirous of releasing the said property from said attachment.

NOW, THEREFORE, We, the undersigned, C. . . . D. . . . defendant and E. . . . F. . . . and G. . . . H. . . . as his sureties all being residents and free holders [*or householders*] of the county of . . . . . and state of Colorado, in consideration of the premises, and of the releasing of said property, do jointly and severally undertake and promise to the effect that in case the said plaintiff recover judgment in said action, and said attachment is not dissolved, then the said defendant

will, on demand, re-deliver to the proper officer such attached property so released, or in default of such re-delivery, that the said defendant, and we E.... F.... and G.... H.... as his sureties, will pay, or cause to be paid, to the said plaintiff the full value of the property so released.

Dated this .... day of ..... A. D. 19..

C.... D....

E.... F....

G.... H....

[*Add justification of sureties as in Form 340.*]

**343. Petition for intervention (Colo. Code Ann. 1911 sec. 117).**

[*Proceed as in Form 303 to the prayer for relief and continue as follows*]:

WHEREFORE your petitioner prays that he be allowed to intervene in said action; that in case answer be made to this petition the issues arising on said answer be tried and determined and that this petitioner have such judgment in reference to the attached property as will secure his right thereto together with his costs; and that he have such other relief as may be just.

L.... M....

Petitioner.

[*Add verification as in case of a pleading.*]

**344. Sheriff's demand for certificate as to corporate stock held by defendant (Colo. Code Ann. 1911 sec. 110).**

[*Title.*]

To E.... F.... President [*or Secretary*] of the G.... H.... company:

TAKE NOTICE that by virtue of a writ of attachment issued in the above entitled action I am required to attach and safely keep the property of the above-named defendant not exempt from execution, sufficient to satisfy the plaintiff's demand, and I hereby request that you furnish me with a certificate under your hand stating the number of rights or shares which the defendant above-named holds or which are

held in trust for him or to his use in the stock of the said corporation.

Dated ....., 19..

L.... M....  
Sheriff ..... County.

**345. Certificate by corporate officer as to stock held by defendant (Colo. Code Ann sec. 110).**

[Title.]

In pursuance of the request made by L.... M.... sheriff of ..... county, I, E.... F.... president of the G.... H.... company, a corporation, do hereby certify that the defendant C.....D.... owns and holds .... shares of capital stock in the said corporation, [or that .... shares of the capital stock of said corporation are held in trust for the defendant, or to the use of said defendant].

Dated ....., 19..

E.... F....

**346. Sheriff's notice of levy in corporate stock (Colo. Code Ann. 1911 sec. 111).**

[Title.]

To E.... F.... President [or Secretary] of the G.... H.... Company:

TAKE NOTICE that by virtue of the writ of attachment heretofore issued in the above-entitled action, of which a true copy is herewith served upon you I have levied upon and taken and do hereby levy upon and take in attachment the following shares of stock in said company owned by said defendant C.... D.... [give description and number of shares as certified to the sheriff by the corporate officer].

Dated ....., 19..

L.... M....  
Sheriff ..... County.

**347. Affidavit for attachment, undertaking writ and subsequent papers (Idaho Rev. Codes 1908 secs. 4302-4307).**

[In Idaho the forms already given in this chapter for use in California may be used with very slight changes, hence it is not deemed necessary to set forth separate forms for use in that state.]



348. **Petition for writ of attachment (Iowa Ann. Code 1897 sec. 3878).**

[*Title as in Form 6.*] **Petition—Attachment.**

The plaintiff alleges as a cause of action against the above-named defendant [*here set out the facts constituting the cause of action as in an ordinary complaint or petition, e. g.*] that on and between the . . . . day of . . . . . 19.. and the . . . . day of . . . . . 19.. the said plaintiff sold and delivered goods, property and merchandise unto the said defendant- and at his request, of the agreed price and value of . . . . . dollars no part of which has been paid except [*state payments*] an itemized statement of which sales is hereto annexed, marked Exhibit A, and made part hereof.

That there is now due the plaintiff thereon from the defendant the sum of . . . . . dollars.

The plaintiff further alleges [*here state one or more of the grounds of attachment mentioned in the Code; if more than one ground is stated they must not be stated in the alternative*].

[*If the writ is desired to be issued on Sunday insert*]: Plaintiff further alleges that he will lose his claim unless the writ of attachment herein is issued and served on Sunday.

WHEREFORE plaintiff demands judgment against said defendant for the sum of . . . . . dollars, with interest from the . . . . day of . . . . ., 19., and costs; and plaintiff also asks that a writ of attachment issue against the lands and tenements, goods and chattels, rights and credits of said defendant.

E. . . . F. . . .,

Attorney for Plaintiff.

[*Venue.*]

I, A. . . . B. . . ., being duly sworn, depose and say that I am the plaintiff in the above entitled action; that I have read [*or, heard read*], the foregoing petition, and know the contents thereof and that the statements therein are true as I believe.

A. . . . B. . . .

Sworn to and subscribed in my presence by the said A. . . . B. . . . this . . . . day of . . . . ., 19..

G. . . . H. . . ., Clerk of the District Court of . . . . . County.

[*Allowance of writ in tort action, under Iowa Code sec. 3882 or divorce action under Sec. 3178 to be endorsed on the foregoing*]:

Let a writ of attachment issue in this action, and property to the amount of . . . . . dollars in value be levied upon [*in a divorce action the amount of the bond, if any, is also to be fixed.*]

J. . . . K. . . .

Judge.

**349. The same on debt not due (Iowa Ann. Code 1897 sec. 3883).**

[*Title as in last preceding form.*]

The plaintiff alleges as a cause of action against the above named defendant [*here allege facts constituting a cause of action on contract against the defendant*]; that said debt will be due from the defendant to the plaintiff on the . . . day of . . . . ., 19.., and that nothing but time is now wanting to fix the defendant's absolute indebtedness to the plaintiff in the sum of . . . . . dollars; that said defendant is about to dispose of his property with intent to defraud his creditors [*or state any other ground of attachment as contained in section 3883, Iowa Code*].

[*Continue as in last preceding form after the statement of ground of attachment, including verification.*]

**350. Affidavit for attachment for debt due the state (Iowa Ann. Code 1897 sec. 3919).**

[*Title.*]

[*Venue.*]

L. . . . M. . . . being duly sworn says that he is county attorney in and for . . . . . county, Iowa, [*or attorney-general of the state of Iowa*], and that he verily believes there is justly due the state of Iowa from C. . . . D. . . ., the defendant herein, the sum of . . . . . dollars, as stated in the foregoing petition [*or, the petition on file in this action*]; that on or about the . . . day of . . . . ., 19.., he demanded said sum of the defendant, and he refused to pay or secure the same or any part thereof,<sup>7</sup> and that unless an attachment is

<sup>7</sup>In actions for money due to the state where an attachment is sued out, it is contemplated by the statute that the attachment shall be issued only when a de-

mand has been made upon the debtor for payment or security, and has been refused. *State v. Morris*, 50 Ia. 203.

issued against the property of said defendant there is danger that said amount due will be lost to the state.

L.... M....

County Attorney of ..... County.

[Or, Attorney-General of the State of Iowa.]

[*Jurat.*]

**351. Affidavit for attachment of specific property (Iowa Ann. Code 1897 sec. 3913).**

[*Title.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff in the above entitled action, and that said action is brought to foreclose a mortgage upon certain personal property [*particularly describing same*], as more fully appears by the verified petition on file in this action; that the plaintiff has a just claim against the defendant, C.... D...., as stated in said petition, and that the said personal property is about to be sold and removed from the state [*or, that plaintiff has reasonable cause to believe and does believe that unless prevented by the court the said property will be sold and removed from this state.*]

WHEREFORE he prays that an attachment be granted against said property.

A.... B....

[*Jurat.*]

[*Allowance, Iowa Code sec. 3915, to be endorsed on the foregoing:*]

Let a writ of attachment issue in this action, and let the property named in this affidavit be seized under such writ upon the following terms and conditions [*here state conditions as to security and the disposition of the property.*]

J.... K...., Judge, &c.

**352. Plaintiff's bond in attachment (Iowa Ann. Code 1897 sec. 3885).**

[*Title.*]

KNOW ALL MEN by these presents that I, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto C.... D.... in the penal sum of ..... dollars, for the true payment of which to the

said C.... D...., his heirs, executors and assigns, we bind ourselves, our heirs, executors and assigns firmly by these presents.

THE CONDITION of the above obligation is such that, whereas the said A.... B...., plaintiff has this day sued out of the office of the clerk of the District Court of the state of Iowa in and for ..... county an attachment against the property of said C.... D...., defendant;

Now, if the said plaintiff shall pay the defendant all the damages which he may sustain by reason of the wrongful suing out of said writ of attachment, then this bond to be void; otherwise in full force.

Dated at ..... this .... day of ....., 19..

A.... B....

E.... F....

G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn, each for himself says that he is a resident of the state of Iowa and is one of the sureties who signed the foregoing bond, and that he is worth the sum of ..... dollars beyond the amount of his debts, and that he has property liable to execution in the state of Iowa equal to ..... dollars.

E.... F....

G.... H....

[*Jurat.*]

The within bond filed and sureties thereon approved by me this .... day of ....., 19..

J.... K...., Clerk, &c.

**353. Writ of attachment (Iowa Ann. Code 1897 sec. 3889).**

[*Title.*]

THE STATE OF IOWA

to the Sheriff of ..... County

Greeting:

Whereas A.... B.... has filed his petition in the office of the clerk of the district court of the state of Iowa in and for ..... county, duly sworn to according to law, claiming of C.... D.... the sum of ..... dollars, as money due on contract, and alleging that said defendant C.... D....

[*here may be stated the ground of attachment*] and asking for a writ of attachment against the goods, chattels, rights and credits, lands and tenements of the said C.... D...., and has filed his bond as required by law;

NOW, THEREFORE, in the name of the state of Iowa, you are hereby commanded to attach the goods and chattels, rights and credits, moneys and effects, lands and tenements of said C.... D.... except such as are by law exempt from execution, wherever the same may be found in your county, or so much thereof as may be necessary to satisfy said plaintiff's claim as above stated, with interest and costs, and safely preserve the same to be dealt with as required by law; and of this writ you will make due and legal service and return to our said court on or before the first day of the next term thereof to be holden at the court house in ..... in said county on the .... day of ..... 19..

WITNESS my hand and the seal of said district court hereunto affixed, at my office in ..... this .... day of ....., 19..

E.... F....  
Clerk, &c.

[SEAL]

**354. Writ of attachment in divorce without bond (Iowa Ann. Code 1897 sec. 3178).**

[*Title.*]

THE STATE OF IOWA

to the Sheriff of ..... County

Greeting:

WHEREAS, the plaintiff in the above action has duly filed her petition for divorce against the above named defendant; and whereas, by endorsement made thereon by Hon. J.... K...., judge of said court, an attachment has been ordered in the amount of ..... dollars without bond:

THEREFORE, in the name of the state of Iowa, you are commanded to attach the property of the said defendant, wherever the same may be found in your county, or so much thereof as may be necessary to satisfy the above stated amount, together with interest and costs of suit, and safely preserve the same, to be dealt with according to law and to summon such persons as garnishees as you may be required in the premises, and according to law in such cases set forth,



and make return of your doings in the premises to the district court in and for . . . . . county, Iowa, on the first day of the next term of said court, to-wit, on the . . . . day of . . . . ., 19..

[SEAL]

WITNESS my official signature, with the seal of said court affixed, at my office in said county, this . . . . day of . . . . . A. D., 19..

L. . . . M. . . .  
Clerk of said court.

**355. Sheriff's return of writ (Iowa Ann. Code 1897 sec. 3923).**

[Title.]

[Venue.]

I HEREBY CERTIFY and return that I received the within writ of attachment on the . . . . day of . . . . ., 19.., at . . . . o'clock . . M. That on the . . . . day of . . . . ., 19.. at . . . . o'clock in the . . . . noon of said day by virtue of said writ, I levied upon and attached the following described real estate as the property of the defendant, to-wit, [*here describe the land, giving book and page where deed under which defendant claims is recorded*];

And also, on the same day, by virtue hereof, I levied on and attached the following described personal property as the property of said defendant, to-wit [*here describe accurately each article of property taken or, if desired and the articles are numerous say, a schedule of which is hereto annexed marked Exhibit A, and made a part of this return*];

And also, by virtue hereof, on the . . . . day of . . . . ., 19.., I attached O. . . . P. . . . as garnishee by informing him that he was attached as garnishee in said cause and leaving him a written notice, a copy of which is attached hereto and marked Exhibit B and made a part hereof; and I further certify and return that by direction of the plaintiff I took the answer of said garnishee, which is returned herewith marked Exhibit C and made a part hereof;

I further certify and return that on the . . . . day of . . . . ., 19.., the defendant, with E. . . . F. . . . and G. . . . H. . . . as sureties, executed and delivered to me the bond hereto attached marked Exhibit D and made a part hereof, where-

upon I discharged said personal property from said levy and delivered the same to defendant;

[*In case a third person has given notice of ownership of attached property and the plaintiff has given an indemnifying bond follow thus.*]: I further certify and return that E.... F.... on the .... day of ..... 19.. served upon me notice of ownership of certain of said property so attached to-wit [*describe property claimed*], a copy of which notice is hereto attached and plaintiff ordered me not to release said property, and to indemnify me for holding said property under said levy, executed and delivered to me his bond with O.... P.... as surety, which bond is hereto attached and returned herewith.

I further certify and return that on the .... day of ....., 19.., I gave the defendant notice of said attachment, and also Y.... Z.... who at said time was in possession of said real estate; and I now return said writ.

Dated the .... day of ....., 19..

L.... M...., Sheriff, &c.

**356. Notice of ownership of attached property by third person (Iowa Ann. Code 1897 secs. 3906, 3991).**

[*Title.*]

To L.... M...., Sheriff of ..... County, Iowa.

YOU ARE HEREBY NOTIFIED that the black horse [*or otherwise describe the property fully*] which you did on the .... day of ....., 19.., levy on as the property of C.... D.... by virtue of a writ of attachment issued out of the district court of ..... county, Iowa, in the case of A.... B...., plaintiff, against C.... D...., defendant, belongs to me [*or if the affidavit is made by an agent or attorney say: belongs to E.... F....*]; that my [*or, his*] interest therein is that of absolute owner [*or state nature of interest*]; that I [*or, he*] acquired such interest by purchasing the said horse on the .... day of ....., 19.., from Y.... Z.... and I [*or, he*] paid therefor ..... dollars [*or state facts showing how and from whom he acquired his interest in the property, and the consideration paid*] and I demand of you the immediate release and surrender of the said horse.

Dated ....., 19..

E.... F....

[*Or, E.... F...., by G.... H...*

[*Venue.*]

his Agent, or Attorney.]

E.... F.... being duly sworn says he is the person who signed the foregoing notice and claim; that he has read [*or, heard read*] said notice, and that the facts stated therein are true [*if this affidavit is made by an agent or attorney it should commence: G.... H.... being duly sworn says he is the agent, or attorney, for E.... F.... and is the person who signed, &c.*]

E.... F....

[*Jurat.*][*Or, G.... H....*]

**357. Indemnifying bond by plaintiff (Iowa Ann. Code 1897 secs. 3906, 3992).**

[*Title.*]

KNOW ALL MEN by these presents that we, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto L.... M...., sheriff of ..... county, Iowa, in the penal sum of ..... dollars lawful money of the United States, for the payment of which well and truly to be made to the said sheriff, his heirs, executors and assigns we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that, whereas the said L.... M...., sheriff as aforesaid, has in his hands to be executed, a certain writ of attachment issued from the office of the clerk of the district court of ..... county, Iowa, in an action pending in said court, wherein A.... B.... is plaintiff and C.... D.... is defendant, which said writ is directed to said sheriff;

NOW, if said obligors shall and will indemnify the said L.... M...., sheriff, against all damages which he may sustain in consequence of the seizure or sale, on said writ, of the following described personal property, to-wit, [*here describe particularly the property*], and shall and will warrant and make good to the purchaser thereof at such sale all the estate and interest which shall be sold therein under said sale, then this obligation to be void; otherwise to remain in full force and virtue.

Dated this .... day of ....., 19..

A.... B....

E.... F....

G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn, each for himself says, that he is a resident of the state of Iowa; that he is one of the sureties in the foregoing bond; that he is worth double the sum secured by said bond beyond the amount of his debts, and that he has property liable to execution in the state of Iowa equal to the sum secured by said bond.

[*Jurat.*]

[*Approval as follows:*]

The foregoing bond taken, and the sureties therein, approved by me this .... day of ....., 19..

E.... F....  
G.... H....

L.... M....  
Sheriff of ..... County, Iowa.

358. **Defendant's bond to perform judgment and discharge attachment (Iowa Ann. Code 1897 sec. 3907).**

[*Title.*]

KNOW ALL MEN by these presents that we, C.... D...., principal, and E.... F.... and G.... H...., sureties, are held and firmly bound unto A.... B.... in the sum of ..... dollars lawful money of the United States, for the payment of which well and truly to be made to the said A.... B...., his heirs, executors and assigns, we bind ourselves, our and each of our heirs, executors and administrators jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that, whereas L.... M...., sheriff of ..... county, Iowa, by virtue of a writ of attachment to him directed, and issued out of the office of the clerk of the district court of the state of Iowa in and for ..... county, in an action wherein A.... B.... is plaintiff and said C.... D.... is defendant, did on the .... day of ....., 19.., levy upon and attach the following described property of the said C.... D...., to-wit, [*here insert description of the property levied on*]; and whereas the said C.... D.... desires to have said attachment and levy discharged, and to obtain restitution of said property;

NOW, THEREFORE, if the said C.... D.... shall well and truly perform any judgment of said court which may be rendered against him in said action, then this obligation to

be null and void; otherwise to remain in full force and virtue.

WITNESS our hands this .... day of ....., 19..

C.... D....

E.... F....

G.... H....

[Add justification of sureties as in last preceding form.]

[Add following approval of bond]:

Executed in presence of O.... P.... clerk [or, sheriff, as the case may be], and I hereby approve the within bond and sureties therein, this .... day of ....., 19..

O.... P...., Clerk,

[or, Sheriff].

### 359. Defendants delivery bond (Iowa Ann. Code 1897 sec. 3909).

[Proceed as in Form 358 down to the condition of the bond, and continue as follows]:

THE CONDITION of this obligation is such that, whereas L.... M...., sheriff of ..... county, Iowa, by virtue of a writ of attachment directed to him and issued out of the office of the clerk of the district court of the state of Iowa, in and for ..... county, in an action wherein said A.... B.... is plaintiff and said C.... D.... is defendant, did on the .... day of ....., 19.., levy upon and attach the following described personal property as the property of the said C.... D...., to-wit, [here describe the attached property].

NOW, THEREFORE, if the above described property, or its appraised value, shall be delivered to the said sheriff or to his successor in office to satisfy any judgment which may be obtained against the said C.... D.... in said action, within twenty days after the rendition of said judgment, then this obligation to be void; otherwise to remain in full force and virtue.

WITNESS our hands this .... day of ....., 19..

C.... D....

E.... F....

G.... H....

[Add justification of sureties as in last preceding bond]:

[Add approval, as follows]:



The within bond taken and sureties therein approved by me this .... day of ....., 19..

O... P...., Sheriff,  
[or, Clerk].

**360. Counter-claim by defendant on attachment bond  
(Iowa Ann. Code 1897 sec. 3888).**

[*Title of court and of cause.*]

The defendant, for answer to the plaintiff's petition herein, alleges:

I. [*Here plead the facts showing defense to the indebtedness set up in the petition upon the merits.*]

II. Further answering the plaintiff's petition, and by way of counter-claim herein, the defendant alleges that on the .... day of ....., 19.., this action was commenced in the district court of ..... county, Iowa, by the plaintiff claiming of the defendant the sum of ..... dollars as due on a certain promissory note [*or briefly state the cause of actions as set forth in the petition*] and that the plaintiff procured a writ of attachment to be issued in said action against the property of this defendant, and caused the same to be placed in the hands of the sheriff of said county for service, under and by virtue of which writ of attachment the said sheriff levied on the property of this defendant described as follows: [*here insert description of the property attached*] and that plaintiff has converted all of said property to his own use.

III. That in the plaintiff's petition in this action it was alleged as grounds for the issuance of said writ of attachment that [*here state the grounds of the attachment contained in the petition*]; that after the filing of said petition and before issuance of said writ the plaintiff filed in the office of the clerk of this court his bond with sureties for the benefit of this defendant as required by law, a copy of which bond is hereto attached and made a part of this counter-claim and marked Exhibit A.

IV. That at the time of the filing of said petition and bond and the issuance of said writ the plaintiff had no reasonable ground to believe the truth of the statements contained in his said petition as grounds for the issuance of said writ of attachment, and that at said time he well knew that the grounds so stated were false; that this defendant

at the said time had not [*here negative the facts alleged as the ground of the attachment*], all of which was well known to the plaintiff at the time said petition was verified and said writ issued; that said writ of attachment was wilfully and maliciously sued out by the plaintiff with the intention and design of injuring this defendant and that defendant was in fact greatly damaged thereby, to-wit, in the sum of . . . . . dollars, as follows: [*here insert proper allegations showing how the damages accrued and the amount thereof*].

V. That plaintiff has not paid defendant any part of the damages so sustained by him by reason of the wrongful suing out of said writ of attachment, and that defendant is the owner of all of said claims.

WHEREFORE defendant demands judgment against the plaintiff for . . . . . dollars damages, and his costs.

E. . . . F. . . .

[*Add verification.*]

Attorney for Defendant.

**361. Notice of appointment of jury to determine perishable character of property attached (Iowa Ann. Code 1907 sec. 3912a).**

[*Title.*]

To C. . . . D. . . . defendant above-named:

YOU ARE HEREBY NOTIFIED that I have appointed E. . . . F. . . ., G. . . . H. . . . and J. . . . K. . . . who are persons having the qualifications of jurors, to be and appear before me at . . . . . in the city of . . . . . in said county and state on the . . . . day of . . . . ., 19. . ., at . . . . o'clock . . . .M., of said day to examine the perishable property attached by me in above entitled cause and to specify, in writing, a day beyond which they do not deem it prudent that the same should be kept in my hands without disposition, at which time and place you can appear and have a personal hearing, if you so desire, and show cause, if any you have, why said jury should not fix a date beyond which said property should be kept by me as sheriff.

Dated . . . . ., 19. . .

O. . . . P. . . .

Sheriff . . . . . County.

**362. Sheriff's summons to jurors in case of attachment of perishable property (Iowa Ann. Code 1907 sec. 3912a).**

[Title.]

To E.... F...., G.... H...., and J.... K....

The undersigned, sheriff of ..... county, state of Iowa, thinking that the property attached by him in the above action is in danger of serious and immediate waste and decay, [or being satisfied that the keeping of the property attached in the above action will necessary be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom,] [or, the plaintiff in the above action having made affidavit to the effect that *state the purport of the affidavit*]

NOW, THEREFORE, you are hereby summoned to be and appear before me on the .... day of ....., A. D. 19.., at ..... at .... o'clock .... M., of said day to examine said property and to specify a day, in writing, beyond which you do not deem it prudent that said property should be kept in my hands without disposition by me.

Dated ....., 19..

O.... P....

Sheriff of ..... County, Iowa.

**363. Report of jurors as to perishable character of property attached (Iowa Ann. Code 1907 sec. 3912a).**

[Title.]

We, the undersigned, having been summoned by the sheriff of ..... county, Iowa, to examine the perishable property attached by him in above entitled cause hereby certify that we have examined the same at the time and place appointed therefor, and we further certify that in our opinion said property should be soon disposed of by said sheriff and that we do not deem it prudent that the same be kept in the hands of said sheriff without disposition beyond the .... day of ....., 19..

WITNESS our hands this .... day of ....., A. D. 19..

E.... F....

G.... H....

J.... K....

Jurors.

**364. Affidavit, undertaking and subsequent papers in attachment (Kans. Gen. Stats. 1909 sec. 5783 et seq.).**

[The forms hereafter given in this chapter for attachment in Nebraska may with slight changes be used in Kansas. See Forms 389 to 402 inclusive.]

**365. Affidavit for attachment (Mont. Rev. Codes 1907 sec. 6657).<sup>8</sup>**

[Venue.]

A.... B...., of lawful age, being duly sworn, says, that he is the plaintiff in the above entitled action [or the agent of the above-named plaintiff and makes this affidavit on behalf and by authority of said plaintiff]; that the defendant in said action is indebted to this plaintiff, above all legal counter-claims, in the sum of ..... dollars, with .... per cent. per annum interest thereon from the .... day of ..... 19.., upon an express [or implied] contract for the direct payment of money now due to-wit; [here describe the contract e. g. a certain promissory note dated &c.] and that the payment of the same has not been secured by any mortgage or lien upon real or personal property or any pledge of personal property, [or, if originally so secured, state the particulars and say: that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless]. Affiant further says that said attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of said defendant.

WHEREFORE, affiant asks that a writ of attachment against said defendant, may be issued in said action, as allowed by law in such cases.

[Jurat.]

A.... B....

**366. Undertaking for attachment (Mont. Rev. Codes 1907 sec. 6659).**

[Title.]

The plaintiff above named having applied for a writ of

<sup>8</sup>The provisions of the Montana statutes regulating the procedure in attachment follow so closely the provisions of the California Code on

the subject that the forms previously given in this chapter for the latter state may be used with slight change in Montana.

attachment in the above entitled action and having made and filed the necessary affidavit as required by law

NOW, THEREFORE, we, the undersigned, residents of the county of . . . . ., Montana, in consideration of the premises and of the issuance of said attachment, do jointly and severally undertake, in the sum of . . . . . dollars, and promise to the effect that if the said defendant recover judgment, or if the court shall finally decide that the plaintiff is not entitled to an attachment in said action, the said plaintiff will pay all costs that may be awarded to the said defendant and all damages which he may sustain by reason of the issuing out of the attachment, not exceeding the sum of . . . . . dollars.

WITNESS our hands and seals, this . . . . day of . . . . ., 19..

A.... B.... [Seal]

C.... D.... [Seal]

E.... F.... [Seal]

[Venue.]

C.... D.... and E.... F...., the sureties above named, being each duly sworn, each for himself, says that he is responsible and a householder or freeholder within the state of Montana, and that he is worth the sum specified in the above undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution.

C.... D....

[Jurat.]

E.... F....

367. Writ of attachment (Mont. Rev. Codes 1907 sec. 6659).

[Title.]

THE STATE OF MONTANA

to the Sheriff of . . . . . County,

Greeting:

WHEREAS, the above entitled action was commenced in the district court of the . . . . . judicial district of the state of Montana, in and for the county of . . . . . by the plaintiff in said action, to recover from the defendant in said action the sum of . . . . . dollars, lawful money of the United States, besides interest at the rate of . . . . per cent per . . . . . from the . . . . day of . . . . . 19.., and costs of



suit; and the necessary affidavit and undertaking herein having been filed as required by law.

NOW, WE DO THEREFORE COMMAND YOU, the said sheriff, that you attach and safely keep all the property of the said defendant C.... D.... within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy said plaintiff's said demand, unless the said defendant give you security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking. And hereof make due and legal service and return.

WITNESS, the Hon. J.... K....,  
judge of the said district court, this  
.... day of ..... 19..

[SEAL]

L.... M....  
Clerk.

**368. Statement furnished to sheriff (Mont. Rev. Codes 1907 sec. 6663).**

[Title.]

In answer to the demand for a statement served on me this .... day of ..... A. D. 19.., by the sheriff of ..... county, Montana, under and by virtue of a writ of attachment issued in the above entitled action, I hereby certify that I am indebted to the said defendant C.... D.... in the sum of ..... dollars, and that I have in my possession and under my control the following personal property belonging to said defendant, to-wit: [*here specify the property held for the benefit of the defendant, or the number of shares of stock held in a corporation, if that be the property which is sought to be reached.*]

O.... P....

**369. Affidavit for attachment (Minn. Gen. Stats. 1913 secs. 7845, 7846).**

[Title.]

[Venue.]

A.... B.... being first duly sworn says he is the plaintiff in the above entitled action [*or, that he is the agent, or*

attorney, for the plaintiff in the above entitled action and makes this affidavit in said plaintiff's behalf]; that said action is brought for the recovery of money and that a summons has been issued therein.

That a cause of action exists against the defendant C.... D.... and in favor of said plaintiff, and the amount of said plaintiff's claim therein is ..... dollars, and the ground thereof is as follows, to-wit, [*here set forth grounds of plaintiff's cause of action, as*] that on the .... day of ....., 19.., the defendant executed and delivered to the plaintiff for value his certain promissory note, of which the following is a copy [*insert copy of note*] which note is now held and owned by the plaintiff and no part thereof has been paid.

And affiant further says [*here set forth one or more of the grounds of attachment contained in the statute, as*] that the defendant is a foreign corporation [*or, that the defendant is not a resident of this state, or, that the plaintiff's debt was fraudulently contracted, &c.*]. [*If two grounds of attachment are stated, they must be stated conjunctively; the allegations must be positive and not on information and belief.*]

And said affiant says that said plaintiff is in danger of losing his said claim by reason of the facts aforesaid, unless a writ of attachment issue; and prays that such writ of attachment may be allowed and issued against the property of said defendant according to the statute in such case made and provided; and said affiant says that no previous application has been made for such order.

A.... B....

[*Jurat.*]

### 370. Allowance of writ (Minn. Gen. Stats. 1913 sec. 7845).

[*To be endorsed on the back of the affidavit*]:

To the Clerk of said Court:

On filing the within affidavit and a bond approved by me in the within entitled cause, let a writ of attachment issue as within prayed.

Dated ....., 19..

J.... K...., Judge of said Court  
[*or, Court Commissioner*]

**371. Bond for attachment (Minn. Gen. Stats. 1913 sec. 7847).<sup>9</sup>**

[*Title.*]

KNOW ALL MEN by these presents that we, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto C.... D...., the defendant above named, in the sum of ..... dollars, lawful money of the United States, to be paid unto said C.... D...., his heirs, executors, administrators or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this .... day of ....., 19..

THE CONDITION of this obligation is such, that whereas the above entitled action has been commenced by the issuance of a summons and the above named plaintiff has applied for a writ of attachment against the property of C.... D...., the defendant in said action, and has filed an affidavit pursuant to the statute in such case made and provided,

Now therefore, in case judgment be given for the defendant in said action, in case the writ shall be vacated, if the said plaintiff shall pay all costs that may be awarded against him and all damages caused by the attachment, not exceeding the penalty of this bond, then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this .... day of ....., 19..

	A.... B.... [Seal]
Signed, sealed and delivered	E.... F.... [Seal]
in presence of:	G.... H.... [Seal]
W.... X....	
Y.... Z....	

[*Venue.*]

On this .... day of ....., 19.. before me, a notary public within and for said county, personally appeared A.... B...., E.... F.... and G.... H...., to me known

<sup>9</sup> All bonds must be approved or acknowledged in like manner as a deed of real estate before they are

received or filed. Rule 1, Dist. Ct. Rules of Minn. As to qualifications of sureties, see Rule 2, id.

to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

L.... M...., Notary Public  
..... County, Minn.

[Venue.]

E.... F.... and G.... H.... being duly sworn, each for himself, on oath says, that he is a resident and freeholder of and in the state of Minnesota, that he justifies upon the foregoing bond as follows: the said E.... F.... in the sum of ..... dollars, the said G.... H.... in the sum of ..... dollars, and that each respectively is worth double the sum in which he so justifies over and above his debts, and other liabilities and exclusive of his property exempt from execution.

E.... F....  
G.... H....

[Jurat.]

I hereby approve the within bond and the sureties thereon.  
Dated ....., 19..

J.... K....

**372. Writ of attachment (Minn. Gen. Stats. 1913 sec. 7848).**

[Title.]

The State of Minnesota to the Sheriff of ..... County.

WHEREAS in the above entitled action an application has been duly made to the proper officer for a writ of attachment against the property of C.... D...., the defendant therein, setting forth by affidavit that a cause of action exists against such defendant and specifying the amount of claim and the ground thereof; and that the defendant is a foreign corporation [or state the ground or grounds of the attachment as in the affidavit] and the bond required by law having been duly executed and filed, and said writ allowed and directed to issue by said officer;

THEREFORE you are hereby commanded and required to attach and safely keep all the property of said C.... D.... within your county and not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, which amounts to the sum of .....

dollars, as appears by the complaint in said action, together with costs and expenses, and that you proceed therein in the manner required of you by law.

[SEAL] WITNESS the Hon. J.... K....,  
Judge of the District Court aforesaid,  
this .... day of ....., 19..  
O.... P...., Clerk.

**373. Sheriff's return and certificate on attachment**  
(Minn. Gen. Stats. 1913 sec. 7850).

[Venue.]

I hereby certify and return that by virtue of the within writ of attachment I have on this .... day of ....., 19..., at the city of ....., in said county, levied on all the right, title and interest of the within named defendant, C.... D...., in and to the following described real [or, personal] property, to-wit [*here insert accurate description of the real estate or an inventory of the personal property attached*].

WITNESS my hand this ..... day of ....., 19..

Fees, mileage \$.... Service \$.... Levy copies \$....	}	E.... F.... Sheriff of ..... County, Minn. By G.... H...., Deputy.
--	---	--

[Venue.]

I hereby certify that I have compared the within copy of the writ of attachment in the within entitled action, and of my return and inventory of attached property thereon as above, with the original writ, return and inventory in my possession, and that the same are true and correct copies thereof and of the whole thereof.

WITNESS my hand this .... day of ....., 19..

E.... F....,  
Sheriff of ..... County, Minn.

property (Minn. Gen. Stats. 1913 sec. 7843).

**374. Affidavit of third person claiming title to attached Title.]**

[Venue.]

E.... F.... being duly sworn says that pursuant to the writ of attachment issued in the above entitled action the



sheriff of ..... county, on the .... day of ....., 19.., seized and attached certain personal property at the city of ..... in said county, described as follows, [*insert description of personal property*] as the property of the above named defendant, C..... D....

Affiant further says that the said property so seized was not at the time of such seizure the property of said C.... D...., but was at that time and still is the property of this affiant, and that the ground of affiant's title and right to said property is as follows [*here state the grounds of the affiant's title in full, as for instance: that the said defendant, C.... D...., on the .... day of ....., 19.., and before the levy of said attachment, for value, sold and delivered the said property to this affiant*].

Affiant further says that the value of the said property is ..... dollars, and that he makes this affidavit for the purpose of obtaining possession of said property from the said sheriff.

E.... F....

[*Jurat.*]

To E.... F...., Esq., Sheriff of ..... County.

TAKE NOTICE that I claim the property described in the foregoing affidavit, and demand delivery thereof.

Dated ....., 19..

E.... F....

**375. Indemnifying bond by plaintiff to sheriff (Minn. Gen. Stats. 1913 sec. 7843).**

[*Title.*]

KNOW ALL MEN by these presents that we, A.... B... as principal, and G.... H.... and J.... K.... as sureties, all of ..... county, Minnesota, are held and firmly bound unto L.... M...., sheriff of ..... county, in the sum of ..... dollars lawful money of the United States, to be paid to the said L.... M...., his heirs, executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally by these presents.

Sealed with our seals and dated this .... day of ....., 19..

WHEREAS the above bounden A.... B.... has sued out

a writ of attachment in a certain action now pending in the . . . . . court of . . . . . county against the property of C. . . . D. . . . , defendant therein; and whereas the said sheriff, under the said writ of attachment has seized and attached certain personal property described as follows [*insert description*] as the property of the defendant C. . . . D. . . . ; and whereas one E. . . . F. . . . claims title to the said property so attached and has made affidavit of his said title, as required by the statutes of Minnesota;

NOW, THEREFORE, the condition of this obligation is such that if the said A. . . . B. . . . shall well and truly save harmless the said L. . . . M. . . . , sheriff as aforesaid, and indemnify him from all harm, damages, cost and expenses which shall or may at any time be incurred by him or them to the said E. . . . F. . . . for levying upon, taking, and holding the said property by virtue of said writ, then this obligation to be void; otherwise of force.

	A. . . . B. . . . [Seal]
Signed, sealed and delivered	G. . . . H. . . . [Seal]
in presence of:	J. . . . K. . . . [Seal]
W. . . . X. . . .	
Y. . . . Z. . . .	

[*Add acknowledgment and justification of sureties as in Form 371.*]

**376. Sheriff's demand on third person for certificate**  
(Minn. Gen. Stats. 1913 secs. 7849, 7935).

[*Title.*]

To E. . . . F. . . . , Esq.

You will please take notice that under the writ of attachment, a certified copy of which is hereto attached, and served upon you, I have attached all moneys, goods, credits, effects, debts due or owing, and all other personal property in your possession or under your control belonging to defendant C. . . . D. . . . named in said writ; and I hereby demand that you furnish me with a certificate specifying the amount, nature and description of the property held by you for the benefit of the defendant and of the debt or debts owing by you to the defendant.

Dated . . . . . , 19. . .

L. . . . M. . . .  
Sheriff of . . . . . County.

**377. The same where shares of stock are attached (Minn. Gen. Stats. 1913 secs. 7849, 7935).**

[Title.]

To E.... F...., President [or Secretary] of the G.... H.... Company.

You will please take notice that under the writ of attachment issued in the above entitled action I have attached all the stock or interest in stock held by the said defendant, C.... D...., in the G.... H.... Company, a corporation, and I demand that you furnish me with a certificate designating the number of rights or shares of the said defendant, C.... D...., in the stock of said corporation, together with any dividend or incumbrance thereon.

Dated ....., 19..

L.... M....

Sheriff of ..... County.

**378. Certificate of third person as to property held.**

[Title.]

In pursuance of the demand made upon me by L.... M...., sheriff of ..... county, Minnesota, I, E.... F...., hereby certify that I hold for the benefit of the defendant, C.... D...., the following described property [*insert description of property*] [or, that I am indebted to the defendant, C.... D...., herein in the sum of ..... dollars.]

Dated ....., 19..

E.... F....

To L.... M....,

Sheriff of ..... County.

**379. Certificate by officer of corporation as to shares of stock (Minn. Gen. Stats. 1913 secs. 7849, 7935).**

[Title.]

In pursuance of the demand made upon me by L.... M...., sheriff of ..... county, I, E.... F...., president of the G.... H.... company, a corporation, do hereby certify that the defendant, C.... D...., owns .... shares of stock of the said corporation and that there are no dividends or incumbrances thereon, as shown by the books of said corporation.

Dated ....., 19..

E.... F....

To L.... M....,

Sheriff of ..... County, Minn.

**380. Affidavit of refusal to furnish certificate (Minn. Gen. Stats. 1913 secs. 7849, 7935).**

[*Title.*]

[*Venue.*]

L.... M.... being duly sworn says that he is sheriff of the county of ....., Minnesota, and that on the .... day of ....., 19.., he served upon E.... F...., Esq., at the city of ....., in said county, a written demand for a certificate of the property of said C.... D...., the defendant herein, in possession of or under the control of the said E.... F.... and held by him for the defendant, a true copy of which demand is attached hereto, marked exhibit A; that at the time of making and serving the said demand deponent made known to said E.... F.... that he had in his hands a warrant of attachment against the property of said C.... D...., and that he then left with the said E.... F.... a certified copy of the said writ together with a notice specifying the property attached; that said E.... F.... then and there refused and has since continued to refuse to furnish to deponent the certificate so demanded, and that deponent prays that the said E.... F.... may be required to be examined on oath concerning the same.

L.... M....

[*Jurat.*]

**381. Order for examination of third person refusing to furnish certificate (Minn. Gen. Stats 1913 secs. 7849, 7935).**

[*Title.*]

Upon the affidavit of L.... M...., sheriff of ..... county, Minnesota, and upon the records and proceedings on file in this action;

It appearing that E.... F...., of the city of ....., in said county, has refused to furnish the said sheriff with a certificate as required by the provisions of sections 4219 and 4301 of the Revised Laws of Minnesota for the year 1905 although such certificate has been duly demanded; now, upon motion of G.... H...., attorney for the plaintiff herein,

IT IS ORDERED that said E.... F.... attend before me on the .... day of ....., 19.., at the court house in

city of . . . . ., at . . . . o'clock in the . . . . noon of said day, and be examined and submit to an examination on oath concerning the amount, nature and description of the property of the said C. . . . D. . . . in the possession and under the control of the said E. . . . F. . . .

J. . . . K. . . .  
District Judge.

**382. Bond by defendant for release of attachment (Minn. Gen. Stats. 1913 sec. 7886).**

[Title.]

KNOW ALL MEN by these presents that we, C. . . . D. . . . as principal, and E. . . . F. . . . and G. . . . H. . . . as sureties, are held and firmly bound unto A. . . . B. . . . the above named plaintiff in the sum of . . . . . dollars lawful money of the United States, to be paid unto the said A. . . . B. . . . his heirs, executors, administrators or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this . . . . day of . . . . ., 19. . .

THE CONDITION of this obligation is such that, whereas certain property of said defendant C. . . . D. . . . has been levied upon and seized under a writ of attachment issued in the above entitled action, and said defendant desires to have said property discharged from said attachment;

Now, therefore, if the said defendant shall pay such judgment as said plaintiff shall recover in said action [in case plaintiff recovers judgment], or an amount thereof equal to the value of the property attached as aforesaid, then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this . . . . day of . . . . ., 19. . .

	C. . . . D. . . . [Seal]
Signed, sealed and delivered	E. . . . F. . . . [Seal]
in presence of:	G. . . . H. . . . [Seal]

W. . . . X. . . .

Y. . . . Z. . . .

[Add acknowledgment and justification of sureties and approval as in plaintiff's bond hereinbefore given.]



**383. Discharge of attachment by plaintiff.**

[Title.]

[Venue.]

I, A.... B...., the above named plaintiff, do hereby certify that a certain writ of attachment issued in the above entitled action, on the .... day of ....., 19.., and under and by virtue thereof the following described premises and real estate situate in the county of ..... and state of Minnesota, described as follows [*insert description*] were attached by the sheriff of ..... county, and which attachment was filed for record in the office of the register of deeds of said county of ..... on the .... day of ....., 19.., at .... o'clock ..M., and duly recorded therein in book ... of ....., on page ....., is hereby discharged and released, and the effect thereof annulled. And the register of deeds of said county is hereby authorized and directed to discharge the same upon the record thereof, according to the statute in such case made and provided.

IN TESTIMONY WHEREOF I, the said A.... B...., have hereunto set my hand and seal this .... day of ....., 19..

A.... B.... [Seal]

Signed, sealed and delivered  
in presence of:

W.... X....

Y.... Z....

[Add acknowledgment as in case of a deed.]

**384. Allegations of complaint in action to enforce log lien by attachment (Minnesota).**

I. That between ..... and ....., both days inclusive plaintiff performed manual labor and services for defendants in cutting, hauling and banking logs, piling, pulpwood, etc., in their logging operations in and near ....., Minnesota.

II. That defendants promised to pay plaintiff for such labor and services [or that the reasonable value of such labor and services was] the sum of ..... dollars, but no part thereof has been paid, though due demand has been made therefor before the commencement of this action, except the sum of ..... dollars, and the sum of ..... dollars, with interest from ....., is now due and owing on said contract.

III. That on . . . . ., a duly verified claim of lien was duly filed by the plaintiff in the office of the Surveyor General at . . . . ., Minnesota, on all said ties, logs, piling, pulpwood, etc., stamped with the registered marks [*copy of marks*].

WHEREFORE plaintiff demands judgment against defendants for . . . . . dollars, with interest from . . . . ., and that said sum, together with his costs and disbursements in this action, and an attorney's fee of \$20, as allowed by law, be declared a lien upon all of said ties, logs, piling, pulpwood, etc., and that such lien may be foreclosed by attachment upon said property, and for such other relief as may be just.

**385. Affidavit for attachment (Mo. R. S. 1909 secs. 2297, 2299).**

[*Title.*]

[*Venue.*]

This affiant states that the plaintiff in the above entitled cause has a just demand against the defendant therein which is now due [*or if not yet due which is to become due . . . . ., 19. .*] and that the amount which this affiant believes the plaintiff ought to recover, after allowing all just credits and set-offs, is . . . . . dollars and . . . . . cents, and that this affiant has good reason to believe and does believe:

That the defendant is not resident of the state of Missouri.

That the defendant is a corporation, whose chief office or place of business is out of the state of Missouri.

[*Or state any other cause for attachment set forth in sec. 2299 Mo. R. S. 1909; if more than one cause is stated they should not be stated disjunctively.*]

A. . . . B. . . .

[*Jurat.*]

[*If the demand be less than fifty dollars add to the foregoing this allegation; This affiant further states that the defendant has not to this affiant's knowledge any goods, chattels, effects or credits within this state liable to an attachment issued by a justice of the peace.*]

**386. Bond for attachment (Mo. R. S. 1909 sec. 2300).**

[*Title.*]

A. . . . B. . . . as principal and E. . . . F. . . . and G. . . . H. . . . as sureties, acknowledge ourselves to be indebted to

the state of Missouri in the sum of ..... dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators.

THE CONDITION of the above obligation is, that whereas, the said A.... B.... as plaintiff is about to commence a suit by attachment in the circuit court of ..... county, Missouri, against the said C.... D.... as defendant returnable to the next ..... term thereof, wherein the sum sworn to is ..... dollars and ..... cents.

NOW, if the said plaintiff shall prosecute his said action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendant or found to have been received by the plaintiff and not justly due to him and pay all damages and costs that may accrue to any defendant, garnishee or interpleader, by reason of the attachment, or any process or proceeding in the suit, or by reason of any judgment or process thereon, and pay all damages and costs that may accrue to any sheriff or other officer by reason of acting under the writ of attachment, following the instructions of plaintiff, then this obligation is to be void; otherwise to remain in full force.

WITNESS our hands and seals, this .... day of ....., 19..

A.... B.... [Seal]

E.... F.... [Seal]

G.... H.... [Seal]

Approved this .... day of ....., 19..

O.... P...., Clerk.

By Q.... R....,

Deputy.

### 387. Writ of attachment (Mo. R. S. 1909 sec. 2311).

[Title.]

[Venue.]

THE STATE OF MISSOURI,  
to the Sheriff of ..... County,

Greeting:

WE COMMAND YOU to attach C.... D.... by all and singular his lands and tenements, goods, chattels, rights, moneys, credits, evidences of debt and effects, or so much thereof as shall be sufficient to satisfy the sum of

..... dollars and ..... cents, with interest and costs of suits, in whose hands or possession soever the same may be found in your county and that you summon the said C.... D.... that he be and appear before our circuit court of the county of ..... on the first day of the next term thereof, to be holden at the court house in ..... in the said county of ..... on the .... day of ..... next, and then and there to answer the petition of A.... B.... wherein he asks judgment for ..... dollars and ..... cents.

AND that you also summon as garnishees all persons in whose hands or possession any personal property, rights, credits, evidences of debt, effects or money of the defendant may be or such person as may be named by the plaintiff, or his attorney, as garnishees, to be and appear before our said court, at the time and place aforesaid, then and there to answer such allegations and interrogatories as may be exhibited against them. And have you then and there this writ.

[SEAL]

In testimony whereof, the undersigned clerk of the said circuit court, has hereto signed his name and affixed the seal of said court at office, this .... day of ....., 19..

O.... P....,  
Circuit Clerk.

By Q.... R...., Deputy.

### 388. Delivery bond in attachment (Mo. R. S. 1909 sec. 2317).

[Title.]

KNOW ALL MEN by these presents, that we, C.... D.... as principal, and E.... F.... and G.... H.... as securities, are held and firmly bound unto L.... M.... sheriff of ..... county, his successors and assigns, in the sum of ..... dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals, and dated at ....., this .... day of ....., 19..

THE CONDITION of the above obligation is such, that whereas, the said L.... M...., sheriff of said county of

....., has by virtue of a writ of attachment issued by the ..... circuit court, in favor of A.... B...., as plaintiff, and against C.... D.... as defendant, returnable to the ..... term of said court, attached and seized the following goods and chattels, and articles of personal property as follows: [*Here describe property attached*] as the property of the said C.... D....;

Now, if the said C.... D.... shall have said property forthcoming, and shall deliver the same when and where the said ..... circuit court shall direct, and shall abide the judgment of the court, then this bond to be void, otherwise to remain in full force and effect.

	C.... D.... [Seal]
Approved.	E.... F.... [Seal]
L.... M....	G.... H.... [Seal]
Sheriff .....	County.

### 389. Affidavit for attachment (Neb. R. S. 1913 sec. 7733).

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is the plaintiff [*or, the agent, or, attorney of the plaintiff*] in the above entitled action, and [*if affidavits is made by agent or attorney*] makes this affidavit on behalf of said plaintiff; deponent further says that the claim in this action is for [*here state the general nature of the plaintiff's claim, as, goods and merchandise heretofore sold and delivered by the plaintiff to the defendant to the amount of ..... dollars, as more fully appears in the petition on file herein*], and that the said claim is just, and that plaintiff ought, as this deponent believes, to recover thereon the sum of ..... dollars, which is the amount of plaintiff's claim.\*

Deponent further states that said defendant is a non-resident of the state of Nebraska [*or state any other cause of attachment contained in section 7732, Neb. R. S. 1913; if two or more grounds are stated they should be stated conjunctively*].

[*Jurat.*]

A.... B....

### 390. Allowance in non-contract action (Neb. R. S. 1913 sec. 7732).

[*To be endorsed upon the original petition*]:



The plaintiff in the within entitled action having applied for the issuance of an order of attachment therein, and it appearing that the action is a proper one for the issuance of such order;

I do hereby allow the said attachment to issue and property to be attached thereunder to the amount of ..... dollars, and I do further direct that the amount of the bond to be given by the plaintiff shall be the sum or ..... dollars.

Dated ....., 19..

J.... K....,  
Judge.

**391. Affidavit for attachment on debt not due (Neb. R. S. 1913 sec. 7778).**

[*Begin as in Form 389, continuing down to \*; and then insert*]: that the said claim will become due on the .... day of ....., 19.., and deponent further states that [*here insert one of the grounds of attachment contained in section 7778, Neb. R. S. 1913, and conclude with signature and jurat*].

**392. Order granting attachment on claim not due (Neb. R. S. 1913 sec. 7779).**

[*To be entered on court journal*]:

Now on this day, upon application of the plaintiff, A.... B...., and it appearing from the affidavit of E.... F...., an attorney of record of said plaintiff in said case, that the claim of A.... B.... is just and that there is cause for granting an attachment in the sum of dollars and ..... dollars probable costs in the case, an attachment is therefore allowed to issue in this case, upon the plaintiff giving an undertaking for the sum of ..... dollars, with approved security, as required by law.

G.... H....,  
Judge.

**393. Undertaking in attachment (Neb. R. S. 1909 sec. 7734).**

[*Title.*]

[*Venue.*]

WHEREAS A.... B.... has commenced a civil action against C.... D.... in the district court of the .....

judicial district of Nebraska, in and for the county of ..... to recover of the said C.... D.... the sum of ..... dollars; and whereas the said A.... B.... has applied to the clerk of said court, by filing the necessary affidavit for an order of attachment, against the said C.... D....;

NOW THEREFORE, we, E.... F.... and G.... H.... hereby undertake to the said C.... D.... in the penal sum of ..... dollars, that the said A.... B.... shall pay to the said C.... D.... all damages which the said C.... D.... may sustain by reason of said attachment, if the order be wrongfully obtained.

Dated this .... day of ....., 19..

E.... F....  
G.... H....

The above undertaking and the sureties thereto approved this .... day of ....., 19..

L.... M....  
Clerk.

### 394. Order of attachment (Neb. R. S. 1913 sec. 7735).

[Title.]

THE STATE OF NEBRASKA

to the Sheriff of said ..... County

Greeting:

WHEREAS A.... B.... has filed the necessary affidavit to obtain an order of attachment against C.... D.... in an action now pending in the district court of ..... county, wherein A.... B.... is plaintiff and C.... D.... is defendant, to recover of the defendant the sum of ..... dollars;

THEREFORE you are commanded to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys and effects of the defendant in your county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim of ..... dollars and the probable costs of this action not exceeding fifty dollars.

You will make due return of this order on the .... day of ....., 19..

WITNESS my hand and the seal of this  
 [SEAL] court this .... day of ....., 19..  
 E.... F....,  
 Clerk of District Court.

**395. Inventory and appraisalment of attached property  
 (Neb. R. S. 1913 sec. 7739).**

[Title.]

[Venue.]

L.... M...., the sheriff of ..... county, having first duly sworn G.... H.... and J.... K...., two residents of said county, to make a true inventory and appraisalment of all property attached as the property of C.... D...., the defendant, on an order of attachment issued in the foregoing action.

NOW, THEREFORE, we, G.... H.... and J.... K...., two residents, and L.... M...., sheriff of said county, do make the following inventory and appraisalment of the property attached by said sheriff in this action, viz: [insert itemized description of property attached, with values].

Given under our hands this .... day of ....., 19..

G.... H....

J.... K...., Appraisers.

L.... M...., Sheriff.

**396. The same, another form (Nebraska).**

[Title.]

[Venue.]

We, L.... M.... sheriff of ..... county, Nebraska, and G.... H.... and J.... K.... residents of said county, the said G.... H.... and J.... K.... having been first duly sworn by said sheriff to make a true inventory and appraisalment of all property attached as the property of C.... D.... on an order of attachment issued in above entitled action, do make the following inventory and appraisalment of said property, to-wit: [itemized description of property attached, with valuation].

Given under our hands this ..... day of ..... A. D.,  
 19 . L.... M...., Sheriff

G.... H....

[Venue.]

J.... K....

I hereby certify that the above named G.... H.... and J.... K.... are residents of said ..... county, and that they were on the .... day of ....., 19.. by me duly summoned and sworn to make the inventory and appraisement as above set forth.

L.... M....  
Sheriff ..... County.

**397. Undertaking by defendant to perform judgment  
(Neb. R. S. 1913 sec. 7753).**

[Title.]

[Venue.]

We, E.... F.... and G.... H...., residents of ..... county, Nebraska, do hereby undertake and bind ourselves to the plaintiff, A.... B...., as sureties that the above named defendant, C.... D...., shall perform the judgment of the court in this action and pay the plaintiff's said judgment, not exceeding the sum of ..... dollars. [*This sum must be double the amount of the plaintiff's claim, as stated in the affidavit for attachment.*]

Dated ....., 19..

E.... F....  
G.... H....

The foregoing undertaking and the sureties thereon approved this .... day of ....., 19..

By the Court:  
J.... K...., Judge.

[*In vacation the undertaking may be executed in presence of and approved by the sheriff, if he still have the writ in his hands, or if the writ has been returned, in the presence and with the approval of the clerk.*]

**398. Forthcoming bond in attachment (Neb. R. S. 1913  
sec. 7740).**

[Form 430 may here be used.]

**399. Application for receiver in attachment (Neb. R. S.  
1913 sec. 7747).**

[Title.]

To the ..... Court of ..... County [or to the Hon. J....  
K...., Judge].

The plaintiff above named hereby makes application for

the appointment of a receiver in aid of the order of attachment heretofore issued in the above entitled action to the sheriff of said county and alleges in support of this application that said sheriff under and by virtue of said writ seized and now has in his possession certain notes due bills, open accounts, books of account and evidences of debt as the property of the above-named defendant; that [*here state the facts showing why a receiver ought to be appointed as for instance, that it is necessary to bring actions on the notes and accounts in order to prevent their becoming outlawed and that for reasons stated it is impracticable for the sheriff to act in such capacity*].

A.... B....

[*To be verified as in case of a pleading.*]

**400. Order appointing a receiver in attachment (Neb. R. S. 1913 sec. 7747).**

[*Title.*]

Upon the verified application of A.... B.... it appearing satisfactorily that good cause exists therefor;

IT IS ORDERED that E.... F.... Esq., of ..... in said county, be and he is hereby appointed receiver in aid of the order of attachment heretofore issued in this action and further that upon taking the oath and giving an undertaking in the penal sum of ..... dollars as required by the statute in such case made and provided the said receiver be vested with all the powers and charged with all the duties provided by the statutes in such cases.

Dated ....., 19..

By the court:

J.... K....,

Judge.

**401. Undertaking by receiver in attachment (Neb. R. S. 1913 sec. 7747).**

[*Title.*]

[*Venue.*]

WHEREAS, by order in the above entitled action dated and filed ..... 19.. the undersigned E.... F.... was appointed receiver in said action,

NOW, THEREFORE, we the said E.... F.... as principal and G.... H.... and J.... K.... as sureties, do



hereby undertake to the state of Nebraska in the penal sum of . . . . . dollars that the said E. . . . F. . . . will faithfully perform his duty as such receiver, and pay over all money, and account for all property, which may come into his hands, by virtue of his appointment at such times and in such manner as the court may direct.

Dated . . . . ., 19..

E. . . . F. . . .  
G. . . . H. . . .  
J. . . . K. . . .

The above undertaking and the sureties thereto approved this . . . . day of . . . . ., 19..

L. . . . M. . . .  
Clerk.

#### 402. Receiver's oath (Neb. R. S. 1913 sec. 7747).

[Title.]

[Venue.]

E. . . . F. . . . being duly sworn says that he will faithfully discharge his duty as receiver in the above entitled action, so help him God.

E. . . . F. . . .

[Jurat.]

#### 403. Affidavit for attachment (N. Dak. Rev. Codes 1905 secs 6938, 6942).<sup>10</sup>

[Title.]

[Venue.]

A. . . . B. . . ., the plaintiff above named, being first duly sworn, says that C. . . . D. . . ., the above named defendant [*here set out in the language of the statute one or more of the grounds of attachment if more than one ground is stated they should be stated conjunctively*].

A. . . . B. . . .

Subscribed and sworn to before me this . . . . day of . . . . ., 19..

O. . . . P. . . .  
Clerk of the District Court.

<sup>10</sup> In North Dakota the warrant of attachment is based upon the verified complaint as well as upon

the affidavit. N. Dak. Rev. Codes sec. 5356.

404. Plaintiff's undertaking for attachment (N. Dak.  
Rev. Codes 1905 sec. 6944).

[Title.]

WHEREAS A.... B...., the above named plaintiff, has commenced an action on a contract [or, on a judgment] for the recovery of money only, against C.... D...., said defendant, and has made application for a warrant of attachment against the property of the said C.... D.... in pursuance of the statute in such case made and provided;

NOW, THEREFORE, if C.... D...., the said defendant, recover judgment against A.... B...., the said plaintiff, or if the attachment be set aside by order of the court, we, A.... B...., the said plaintiff as principal, and E.... F.... and G.... H...., as sureties, undertake, promise and agree to and with said defendant that the said plaintiff shall and will pay all costs that may be awarded to said defendant, and all damages he may sustain by reason of the said attachment, not exceeding the sum of ..... dollars.

Dated this .... day of ....., 19..

Signed, sealed and delivered  
in presence of:

A.... B....  
E.... F....  
G.... H....

W.... X....  
Y.... Z....

[Venue.]

On this .... day of ....., 19.., before me, L.... M...., clerk of the district court within and for said county and state, personally appeared A.... B...., E.... F.... and G.... H...., known to me to be the persons who are described in and who executed the foregoing and within instrument, and severally acknowledged to me that they executed the same.

[SEAL] L.... M...., Clerk of  
the District Court of ..... County.

[Venue.]

E.... F.... and G.... H.... being first duly sworn, each for himself says that he is a resident and freeholder [or, householder] within the state of North Dakota, and is worth the sum of ..... dollars over all his debts and liabilities in property within this state exclusive of all property ex-

empt from execution by the laws of this state.

[*Jurat.*] E.... F....  
-G.... H....

405. Warrant of attachment (N. Dak. Rev. Codes 1905 sec. 6943).

[*Title.*]

THE STATE OF NORTH DAKOTA

to the Sheriff of the County of .....,

Greeting:

A verified complaint in the above entitled action having been filed in the office of the clerk of said court, setting forth a proper cause of action for attachment, in which the plaintiff demands judgment against defendant for the sum of ..... dollars and interest at the rate of .... per cent per annum from the .... day of ....., 19.., and an affidavit having also been filed stating that the defendant [*here set out the statutory ground or grounds of attachment stated in the plaintiff's affidavit*];

NOW, you are hereby required to attach and safely keep all the property of said defendant within your county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, with costs and disbursements, unless the defendant delivers to you an undertaking in favor of the plaintiff, with sufficient surety to the effect that defendant will pay any judgment which the plaintiff may obtain against him in the action, or an undertaking with like surety to the effect that the property of said defendant which has been or is about to be attached shall be forthcoming in substantially as good condition as it is at the time of giving the undertaking, to answer such judgment, such undertaking in either event to be in an amount equal to the value of such property according to your inventory, in either of which cases you will take such undertaking, and when your warrant shall be fully executed or discharged you are required to return the same with your proceedings to this court.

WITNESS the Hon. J.... K...., Judge of the District Court in and for ..... County, and the seal of said court, this .... day of ....., 19..

[SEAL]

L.... M....  
Clerk of said Court.

**406. Defendant's undertaking to pay judgment (N. Dak. Rev. Codes 1905 sec. 6943).**

[*Title.*]

WHEREAS the plaintiff above named has sued out a warrant of attachment against the defendant, C.... D...., in this action, by virtue of which the sheriff of ..... county has levied upon [*or, is about to levy upon*] certain personal property of the defendant described as follows [*insert description of property*];

NOW, THEREFORE, we C.... D...., as principal, and E.... F.... and G.... H...., as sureties, hereby undertake, promise and agree to and with the said plaintiff that the said defendant will pay any judgment which the plaintiff may obtain against him in said action.

Signed, sealed and delivered  
in presence of:

C.... D....  
E.... F....  
G.... H....

W.... X....  
Y.... Z....

[*Acknowledgment and justification of sureties as in Form 404.*]

**407. Defendant's undertaking that property shall be forthcoming (N. Dak. Rev. Codes 1905 sec. 6943).**

[*Proceed as in form last preceding up to and including the description of the property attached, and continue as follows*]:

NOW, THEREFORE, we, C.... D...., as principal, and E.... F.... and G.... H...., as sureties, hereby undertake, promise and agree to and with the said plaintiff in the sum of ..... dollars [*the amount must be equal to the value of the property according to the sheriff's inventory*] that the said property of the said defendant which has been [*or, is about to be*] attached shall be forthcoming in substantially as good condition as it is at the time of giving this undertaking, to answer any judgment which the plaintiff may obtain against the defendant in this action.

Signed, sealed and delivered  
in presence of:

C.... D....  
E.... F....  
G.... H....

W.... X....  
Y.... Z....

[*Acknowledgment and justification as in Form 404.*]

**408. Notice of attachment of real estate or bulky personal property, to be recorded in office of register of deeds (N. Dak. Rev. Codes 1905 sec. 6948).**

[*Title.*]

NOTICE is hereby given that an action has been commenced by the above named plaintiff against the above named defendant, and a warrant of attachment issued therein, in which the amount of plaintiff's claim is stated to be the sum of . . . . . dollars, and by virtue thereof and of the statute in such case made and provided, I file this notice as a levy upon the following described real [*or, personal*] property situated in the county of . . . . . in said state, to-wit, [*here insert an accurate description of the real estate or personal property attached*].

L. . . . M. . . . ,  
 Sheriff of . . . . . County, North Dakota.

**409. The same, to be served on the occupant or person in possession thereof (N. Dak. Rev. Codes 1905 sec. 6950).**

[*Title.*]

To E. . . . F. . . .

SIR:

Take notice that I have this . . . . day of . . . . ., 19. ., under and by virtue of a writ of attachment duly and regularly issued by the district court within and for . . . . . county, state of North Dakota, on the . . . . day of . . . . ., 19. ., in an action therein pending, wherein A. . . . B. . . . is plaintiff and C. . . . D. . . . is defendant\* attached certain personal property belonging to said C. . . . D. . . . and held in your possession, described as follows [*here insert accurate description of the property attached*].

[*If the property attached be real estate insert after \**]: attached that certain parcel of real estate belonging to the said C. . . . D. . . . which you now occupy, described as follows [*here insert accurate description of real estate*].

Given under my hand this . . . . day of . . . . ., 19..

L. . . . M. . . .  
 Sheriff of . . . . . County, North Dakota.



**410. Plaintiff's indemnifying undertaking to sheriff (N. Dak. Rev. Codes 1905 sec. 6951).**

[*Title.*]

WHEREAS the plaintiff above named has sued out a warrant of attachment against the defendant C.... D.... in this action, by virtue of which the sheriff of ..... county has levied upon and seized certain personal property described as follows [*here insert description of property*] and whereas it is claimed by E.... F.... that said property is not the property of the defendant C.... D...., but that the said E.... F.... has the title thereto and the right to possession thereof; and whereas the said E.... F.... has made affidavit of his title to said property stating the value thereof and the ground of such title, and has demanded that the said sheriff release such levy;

NOW, THEREFORE, we, A.... B...., as principal, and G.... H.... and J.... K...., as sureties, hereby undertake, promise and agree to and with the said sheriff of ..... county that we will at all times indemnify the said sheriff against the said claim of the said E.... F.... and will save and hold harmless the said sheriff from all damages, costs and charges of any nature incurred or suffered by him by reason of his levy upon said property and by reason of his holding the said property and disposing of the same under the said writ of attachment.

Signed, sealed and delivered  
in presence of:

A.... B....  
G.... H....  
J.... K....

W.... X....  
Y.... Z....

[*Acknowledgment and justification of sureties as in Form 404.*]

**411. Undertaking to obtain release of partnership property when the interest of one partner only is seized (N. Dak. Rev. Codes 1905 sec. 6959).**

[*Title.*]

WHEREAS the plaintiff above named has sued out a warrant of attachment against the defendant, C.... D...., in this action, by virtue of which the sheriff of ..... county has levied upon certain personal property described as

follows [*here insert description of property*]; and whereas it appears by the affidavit of one E.... F.... [*or, if other affidavits have been filed upon the hearing, recite them*] that the property so levied upon is the property of the firm composed of the said C.... D.... and E.... F.... and that the interest of one of said partners, to-wit, C.... D...., only has been levied upon; and whereas the said E.... F.... has made application to the court for an order to discharge the said attachment as to said personal property;

NOW, THEREFORE, we, E.... F...., as principal, and G.... H.... and J.... K...., as sureties, hereby undertake, promise and agree to and with the said sheriff, in the sum of ..... dollars [*the amount of the undertaking is to be fixed by the court or judge*] that they will pay to the said sheriff on demand the amount of the interest of the said C.... D.... in the said partnership property if judgment shall be rendered in the above entitled action in favor of the plaintiff and against the said defendant, the amount of such interest to be determined by reference or otherwise, as the court may direct.

Signed, sealed and deliered  
in presence of:

W.... X....  
Y.... Z....

E.... F....  
G.... H....  
J.... K....

[*Acknowledgment and justification of sureties as in Form 404.*]

**412. Affidavit for attachment (S. Dak. C. C. P. 1908 sec. 207).<sup>11</sup>**

[*Caption as in Form 5.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff in the above entitled action [*or, that he is the agent of the plaintiff in the above entitled action and makes this affidavit on behalf of said plaintiff and is thereunto duly authorized*]; that C.... D...., the defendant is above named, justly

<sup>11</sup>The affidavit may be made by an agent who states in the affidavit that he is the agent of the plaintiff duly authorized, and makes

the same in plaintiff's behalf. *Hardenbery v. Roberts*, 6 S. Dak. 487; 61 N. W. 1128.

indebted to the said plaintiff in the sum of ..... dollars and .... cents, over and above all discounts and set-offs, which said sum is now due; and that a cause of action exists therefor in favor of said plaintiff and against said defendant amounting to the said sum of ..... dollars, the grounds of which are as follows [*set forth specifically the grounds of the cause of action*]; that the defendant, C.... D...., is not a resident of this state [*or state any other ground of attachment as contained in the statute, S. Dak. C. C. P. sec. 207; if more than one ground is stated they must be stated conjunctively*].

A.... B....

[*Jurat.*]

**413. Undertaking for attachment (S. Dak. C. C. P. 1908 sec. 208).**

[*Title.*]

WHEREAS A.... B...., the plaintiff above named, has commenced an action by summons for the recovery of money against C.... D...., defendant, and has made [*or, is about to make*] application for a warrant of attachment against the property of said C.... D...., defendant, as security for the satisfaction of such judgment as the plaintiff may recover in said action;

NOW, THEREFORE, if C.... D...., the defendant, recover judgment against the said plaintiff in said action, or if the attachment therein be set aside by order of the court, we, E.... F.... and G.... H.... do hereby undertake and agree to and with the said defendant that the said plaintiff will pay all costs that may be awarded to the said defendant, and all damage he may sustain by reason of the said attachment, not exceeding the sum of ..... dollars.

Dated the .... day of ....., 19..

E.... F....  
G.... H....<sup>12</sup>

[*Venue.*]

On this .... day of ....., 19.., before me, a justice of the peace in and for said county and state, personally appeared E.... F.... and G.... H...., known to me to be the persons described in and who executed the within and foregoing

<sup>12</sup> It is not necessary that the plaintiff. B. H. M. Co. v. Gardiner, 5 S. Dak. 246; 58 N. W. 557.

instrument and acknowledged to me that they executed the same.

L.... M....  
Justice of the Peace.

[Venue.]

E.... F.... and G.... H.... being each duly sworn, each for himself says that he is the surety in the within bond; that he is a resident and freeholder of said state and worth the sum of ..... dollars specified in the within bond, over and above his debts and liabilities, in property within the state of South Dakota not by law exempt from execution.

Subscribed and sworn to before me  
this .... day of ....., 19..

L.... M.... Justice of the Peace.

I find the sureties in the within undertaking sufficient, and do approve and allow the same.

Dated ....., 19..

O.... P....  
Clerk of the Circuit Court,  
..... County, S. Dak.

**414. Warrant of attachment (S. Dak. C. C. P. 1908 sec. 209).**

[Title.]

THE STATE OF SOUTH DAKOTA  
to the sheriff of the County of .....

Greeting:

WHEREAS an application has been made to me for a warrant of attachment against the property of C.... D...., defendant, in an action in the ..... court of said county, wherein A.... B.... is plaintiff and C.... D.... is defendant;

AND WHEREAS the affidavit of A.... B...., presented on such application states that a cause of action upon contract for the recovery of money exists against said defendant in favor of said plaintiff, and that the sum of ..... dollars is due from the said defendant to said plaintiff upon [*here state the nature of the demand*], which constitutes the said plaintiff's demand against the defendant in said action; and that said defendant [*here state one or more of the statutory*

*grounds for attachment*] and that the plaintiff is entitled to said warrant of attachment, according to the provisions of the laws of this state, and he having given the undertaking required by law;

NOW, you are hereby commanded and required to attach and safely keep all the property of said defendant not exempt from execution within your county, or so much thereof as may be sufficient to satisfy the plaintiff's demand above stated, together with costs and expenses, as security for the satisfaction of such judgment as said plaintiff may recover in said action; unless the defendant give you security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy said plaintiff's demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and when this warrant shall be fully executed or discharged, you are required to return the same, with your proceedings thereon, to this court.

WITNESS the Hon. O.... P...., Judge of the said ..... Court of ..... county, at ....., this ..... day of ....., 19..

[SEAL]

Q.... R....  
Clerk of ..... Court,  
..... County.

**415. Claim of ownership of attached property by third person (S. Dak. C. C. P. 1908 secs. 214, 343).**

[*Title.*]

PLEASE TAKE NOTICE that the black horse [*or describe particularly the property claimed*] this day attached by you in the above entitled action is claimed by O.... P...., of ....., as his property, and is not the property of the defendant in the above entitled action.

Dated ....., 19..

O.... P....  
[*or, L.... M...., Attorney for O.... P....*]  
[*Give residence and address.*]

**416. Notice of third person's claim to be given by sheriff to plaintiff (S. Dak. C. C. P. 1908 secs. 214, 343).**

[*Title.*]



TAKE NOTICE that O.... P.... makes claim to the property levied upon by me [or if the claim covers only specific articles, describe them] under the attachment issued out of the ..... court against the property of C.... D.... in the above entitled action, and that I shall proceed to try the claim of the said O.... P.... before a jury to be summoned by me for that purpose at ....., on the .... day of ....., 19..

Dated....., 19..

L.... M....  
Sheriff of ..... County.

To A.... B....,  
E.... F...., and G.... H....  
[To claimant, and to attorneys for  
plaintiff and defendant.]

**417. Oath to jurors upon trial of claim (S. Dak. C. C. P. 1908 secs. 214, 343).**

You and each of you do solemnly swear that you will well and truly try the claim of O.... P.... to the property levied on by the sheriff of ..... county, under the attachment in favor of A.... B.... against C.... D...., and true inquisition make according to the evidence, so help you God.

**418. Oath to witness upon trial of claim (S. Dak. C. C. P. 1908 secs. 214, 343).**

You do solemnly swear that the evidence which you shall give to the jury touching the claim of O.... P.... to the property levied on by the sheriff of ..... county, under the warrant of attachment in favor of A.... B.... against C.... D.... shall be the truth, the whole truth and nothing but the truth, so help you God.

**419. Verdict of jury upon the trial of claim (S. Dak. C. C. P. 1908 secs. 214, 343).**

[Title.]

The undersigned, being a jury summoned and sworn by the sheriff of ..... county, to try the claim of O.... P.... to the property levied on by the said sheriff under the attachment herein in favor of A.... B.... against C.... D...., to-wit [specifying the property], do upon our oaths

say that the title to the said property was [*or, was not*] in the said O . . . . P . . . . at the time of said levy.

In testimony whereof we have hereunto set our hands and seals this . . . . day of . . . . ., 19..

[*Signatures and seals of jurors.*]

**420. Indemnifying undertaking by plaintiff after adverse verdict by sheriff's jury (S. Dak. C. C. P. 1908 secs. 214, 343).**

[*Title.*]

WHEREAS an attachment has been issued in the above entitled action in favor of the above named plaintiff, A . . . . B . . . ., against the property of the above named defendant, C . . . . D . . . ., under which L . . . . M . . . ., sheriff of the county of . . . . ., has attached and taken into his custody certain goods and chattels [*specifying them*] and whereas O . . . . P . . . ., of . . . . ., claims the same, and a jury has by its inquisition found the same property in said claimant;

NOW, THEREFORE, E . . . . F . . . ., of the city of . . . . . and county of . . . . ., state of . . . . ., merchant, and G . . . . H . . . ., of the town of . . . . ., county of . . . . ., and state aforesaid, farmer, do hereby jointly and severally undertake and agree, pursuant to the statute, to indemnify the said sheriff for the detention thereof and hold him, the said sheriff, harmless from all damages, costs and charges resulting from the said taking and detention of said property.

Dated . . . . ., 19..

E . . . . F . . . .

G . . . . H . . . .

[*Acknowledgment and justification as in Form 413.*]

**421. Undertaking by defendant to discharge attachment (S. Dak. C. C. P. 1908 sec. 222).**

[*Title.*]

An attachment having been issued in the above action to the sheriff of the county of . . . . . and the above named defendant having appeared in such action, and being about to apply for an order to discharge the same, we, E . . . . F . . . . and G . . . . H . . . ., of . . . . ., in the said county of . . . . ., do hereby, pursuant to the statute in such case made and

provided, undertake in the sum of ..... dollars,<sup>13</sup> that we will, on demand, pay to the above named plaintiff the amount of the judgment which may be recovered against the above named defendant in this action, not exceeding the above mentioned sum.

Dated ....., 19..

E.... F....

G.... H....

[*Venue.*]

On this .... day of ....., 19.., before me, a justice of the peace in and for said county and state, personally appeared E.... F.... and G.... H...., known to me to be the persons who are described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

Y.... Z...., Justice of the Peace.

[*Venue.*]

E.... F.... and G.... H.... being severally sworn, each for himself says that he is a freeholder [*or, householder*] of the county of ..... in this state, and that he is worth the sum of ..... dollars over and above all his debts and liabilities in property within the state of South Dakota not by law exempt from execution.

E.... F....

G.... H....

[*Jurat.*]

I certify that I find the sureties in the foregoing undertaking sufficient, and do approve and allow the same.

O.... P...., Clerk, &c.

**422. Affidavit for discharge of attachment on partnership property attached in an action against one partner alone (S. Dak. C. C. P. 1908 sec. 224).**

[*Title.*]

[*Venue.*]

E.... F.... being first duly sworn says that the above entitled action has been duly commenced and is now pending in this court, and that on the .... day of ....., 19.., a writ of attachment was duly issued out of this court in the said action, under and by virtue of which writ the sheriff

<sup>13</sup>The penal sum of the undertaking must be at least double the sum claimed by the plaintiff. S. Dak. Rev. Codes C. P. sec. 222.

of the said county of ..... did on the .... day of ....., 19.., seize and levy upon the following described personal property [*here insert description of property attached*] that at the time said property was so seized the same was and still is partnership property belonging to the firm of [*insert name of firm*] which firm was then and still is composed of this affiant and the defendant C.... D....; that the property so levied upon is worth the sum of ..... dollars, and that the interest of the defendant C.... D.... in said property is worth not exceeding the sum of ..... dollars.<sup>14</sup>

WHEREFORE this affiant makes this affidavit for the purpose of applying to the court for an order discharging the said attachment upon the said partnership property, upon the giving of an undertaking in accordance with law.

E.... F....

[*Jurat.*]

#### 423. Undertaking for discharge of attachment on partnership property (S. Dak. C. C. P. 1908 sec. 224).

[*Title.*]

A warrant of attachment having been issued in the above entitled action to the sheriff of the county of ....., and one E.... F...., of ....., in said county having made affidavit that the property heretofore seized by the sheriff in this action; described as follows [*here insert description of the property attached*], was at the time of such seizure and still is partnership property belonging to the defendant, C.... D...., and said E.... F.... as copartners, and having made application for an order discharging the said attachment as to said personal property upon giving the undertaking required by the statute in such case, and the said court, after the hearing of testimony and having fixed the amount of said undertaking at the sum of ..... dollars;

We, E.... F...., as principal, and G.... H.... and

<sup>14</sup>The amount of the undertaking is to be fixed by the court or the judge to whom the application is made, and it must not be less than the value of the interest of the defendant in the partnership goods attached, and the court or judge is authorized to hear affi-

davits or oral testimony respecting the value of such interest. If there be likelihood of dispute as to the value, additional affidavits from third persons showing the value thereof should be attached to the foregoing affidavit.

J.... K...., as sureties, all of ....., in said county of ....., state of South Dakota, do hereby, pursuant to the statute in such case made and provided, undertake in the sum of ..... dollars that if judgment shall be rendered in this action in favor of the plaintiff we will pay to the said sheriff on demand the amount of the defendant's interest in such partnership property, which amount is to be determined by reference or otherwise, as the court may direct.

Dated ....., 19..

E.... F....

G.... H....

J.... K....

[Add acknowledgment and justification of sureties and approval as in Form 421.]

**424. Affidavit for attachment (Okla. Comp. Laws 1909 secs. 5701, 5702).**

[Title.]

[Venue.]

A.... B.... being duly sworn, says: that he is the plaintiff [or the agent or the attorney of the plaintiff] in the above entitled action; that said plaintiff has commenced said action against said defendant for the recovery of ..... dollars upon a promissory note executed by said defendant and owned by the plaintiff [or otherwise state the general nature of the plaintiff's claim]; that the defendant is indebted to said plaintiff in said sum; that said claim is just and due, and is wholly unpaid [or, if the claim is not yet due, that said claim will become due ....., 19.. and is wholly unpaid].

That the said defendant is a foreign corporation, [or state any other separate ground of attachment set forth in sec. 5701 if two grounds are stated they must be stated conjunctively.]

A.... B....

[Jurat.]

**425. The same for rent of farm lands (Okla. Comp. Laws 1909 secs. 4098, 4101, 4102).**

[Title.]

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff [or the agent or attorney for the plaintiff] in the above



entitled cause, that the above named defendant C.... D.... is a tenant of said plaintiff and is justly and truly indebted to said plaintiff in the sum of ..... dollars, as rents for the use and occupation of the following described farming lands, situated in said county, to-wit: [*describe lands*] and said plaintiff claims a lien upon the crops grown on said lands as security for the payment of said rents. Affiant further says, that said sum is wholly due and unpaid after the allowance of all just credits and offsets: [*or that the said sum is to grow due within one year from this date, to-wit on the ..... day of ....., 19...* That said defendant intends to remove his property and the crops grown on said lands from said leased premises [*or state other facts prescribed in sec. 4101 as grounds for attachment for rent*].

That said crops upon which plaintiff claims a lien consist of [*here briefly describe the same and state where same are situated*].

A.... B....

[*Jurat.*]

**426. Undertaking for attachment (Okla. Comp. Laws 1909 sec. 5703).**

[*Title.*]

WHEREAS, A.... B.... plaintiff, has commenced a civil action against said C.... D.... defendant in the ..... court of ..... county, to recover the sum of ..... dollars, and has duly filed in said court the necessary affidavit, for an order of attachment to be issued in said action against said defendant,

NOW, THEREFORE, we E.... F.... and G.... H.... hereby undertake to said defendant in the penal sum of ..... dollars that the plaintiff shall pay to the said defendant all damages, which the said defendant may sustain by reason of said attachment, including reasonable attorney's fees, if the order be wrongfully obtained.

WITNESS our hands this .... day of ....., A. D. 19..

E.... F....

G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn each for himself says that he is a resident householder and freholder within the state of Oklahoma, and has property

within said state over and above all his just debts and liabilities, exclusive of property exempt from execution, to the amount hereinafter stated that is to say, he, the said E.... F.... is worth the sum of ..... dollars; he, the said G.... H...., is worth the sum of ..... dollars.

E.... F....  
G.... H....

[Venue.]

I hereby approve the above bond this .... day of ....., 19..

Clerk.

**427. Order of attachment (Okla. Comp. Laws 1909 sec. 5704).**

[Title.]

[Venue.]

THE STATE OF OKLAHOMA,

to the Sheriff of ..... County,

Greeting:

YOU ARE COMMANDED to attach and safely keep the \*lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the defendant C.... D.... not exempt by law from being applied to the payment of the claims of the plaintiff A.... B.... \*\* for the sum of ..... dollars or so much thereof as will satisfy said claim and the sum of ..... dollars, the probable costs of this action.

You will make the return of this order on the ..... day ....., 19..

IN WITNESS WHEREOF, I have here-  
unto set my hand and the seal of said  
court at ..... this .... day of .....  
A. D. 19..

[SEAL]

L.... M...., Clerk.  
By N.... O...., Deputy.

[In case of an attachment against crops for rent insert between the \* and the \*\* in the above form "the crops grown on the premises described in the affidavit for attachment in this action, to-wit here describe same as in the affidavit.]

428. Sheriff's return on attachment (Okla. Comp. Laws 1909 sec. 5708).

[Venue.]

[To be endorsed on the order]:

I, J.... K...., sheriff of ..... county, state of Oklahoma, do hereby certify and return that I received the within order on the .... day of ....., 19.., at .... o'clock .. M., and that I executed the same by going to the place where the property of the within named defendant C.... D.... described in the inventory and the appraisement hereunto annexed, was found, and there on the .... day of ....., 19.., at .... o'clock .. M., of said day, in the presence and hearing of E.... F.... and G.... H...., two credible persons, declared that by virtue of said order I attached said property at the suit of the within named plaintiff;

And I further certify and return that with L.... M.... and O.... P.... two householders of the county, who were by me first duly sworn [or affirmed] did make a true inventory and appraisement of all said property attached, which inventory and appraisement was by me and said householders signed and is hereunto annexed and returned with this order.

I further certify that I delivered a copy of this order duly certified to the said defendant, and that said property is now in my possession subject to the order of the court. [Or if a retention bond has been given: said property is not now in my possession or custody by means of the fact that as the .... day of ....., 19.. I delivered the same to N.... O.... in whose possession the same was found, upon the execution by him in my presence of the undertaking returned herewith].

Dated ....., 19..

J.... K....  
Sheriff ..... County.

429. Sheriff's inventory and appraisement on attachment (Okla. Comp. Laws sec. 5708).

[Title.]

[Venue.]

L.... M.... and O.... P.... being each duly sworn each for himself says that he will make a true inventory and appraisement of the property attached in the above entitled

action according to his best judgment. So help him God.

[*Jurat.*]

L.... M....  
N.... O....

INVENTORY AND APPRAISEMENT of the property attached in the above entitled action.

Articles	Value	
Total appraised value		

[*Venue.*]

We hereby certify the within and foregoing to be a true and correct inventory and appraisement of all the property taken in the attachment in the above entitled action on the .... day of ....., 19.., under the order returned herewith.

J.... K...., Sheriff.  
By R.... C...., Under Sheriff.  
L.... M....  
O.... P....  
Appraisers.

**430. Forthcoming bond in attachment (Okla. Comp. Laws sec. 5710).**

[*Title.*]

WHEREAS the above named plaintiff did on the .... day of ....., 19.., begin the above entitled action against the above named defendant to recover the sum of ..... dollars, and caused an order of attachment to be issued and levied upon property in the possession of E.... F.... of the appraised value of ..... dollars, and whereas, said

E.... F.... desires to have said property delivered to him;  
 NOW, THEREFORE, we the said E.... F.... as principal and G.... H.... and J.... K.... assurities, hereby undertake and bind themselves to the said plaintiff in the penal sum of ..... dollars that the said attached property or its appraised value in money shall be forthcoming to answer the judgment of the court in said action.

Witness our hands this .... day of ....., 19..

E.... F....

G.... H....

[Justification of sureties as in Form 426.] J.... K....

**431. Undertaking to discharge attachment (Okla. Comp. Laws sec. 5740).**

[Title.]

WHEREAS the above named plaintiff A.... B.... did on the .... day of ....., 19.., begin the above entitled action against the above named defendant C.... D.... to recover the sum of ..... dollars, and caused an order of attachment to be issued and levied upon the property of said defendant.

NOW, THEREFORE, we, E.... F.... and G.... H.... hereby undertake to the said plaintiff in the penal sum of ..... dollars that the defendant shall perform the judgment of the court in said action.

Witness our hands this .... day of ....., 19..

E.... F....

G.... H....

[Justification as in Form 426.]

[Approval must be by the Court.]

**432. Indemnity bond (Oklahoma).**

[Title.]

KNOW ALL MEN by these presents that we A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto J.... K.... sheriff of ..... county, state of Oklahoma, in the penal sum of ..... dollars, for the payment of which sum, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally by these presents.



THE CONDITION of the above obligation is such that whereas, on the . . . . day of . . . . ., 19.., an order of attachment was issued out of the court of . . . . . county; state of Oklahoma, in the above entitled cause, and placed in the hands of said above named sheriff to be executed, and said sheriff has levied [*or has been required by the plaintiff to levy upon*] the following described goods and chattels, to-wit: [*Describe the property*];

And whereas the ownership of said property is in doubt and the same is claimed by one R. . . . S. . . . to be his property and said sheriff has required that he be indemnified; now, therefore, if said plaintiff shall pay all costs and damages which said J. . . . K. . . ., sheriff aforesaid, shall sustain by reason of the detention or sale of such property, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof we have hereunto subscribed our names this . . . . day of . . . . ., 19..

A. . . . B. . . .

E. . . . F. . . .

[*Justification of sureties as in Form 426.*] G. . . . H. . . .

**433. Affidavit for attachment (Oregon Laws 1910 sec. 296).**

[*Title.*]

[*Venue.*]

A. . . . B. . . . being duly sworn says he is the plaintiff in the above entitled action; [*or the agent of the plaintiff above named and makes this affidavit in said plaintiff's behalf*]; that the above named defendant is indebted to the plaintiff in the sum of . . . . . dollars over and above all legal set-offs or counter-claims upon a contract for the payment of money to-wit: [*briefly describe contract*]; that the payment of the said contract has not been secured by any mortgage, lien or pledge upon real or personal property; [*or, if originally secured state the facts and then allege that such security has been rendered nugatory by the act of the defendant*];

[*If the ground of attachment be that the defendant is a non-resident insert in lieu of the above statement as to the unsecured character of the claim, that the defendant is a non-resident of this state*];

That the sum for which the attachment is asked in this action is an actual, bona fide, existing debt due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay nor defraud any creditor of the defendant.

A.... B....

[*Jurat.*]

**434. Undertaking for attachment (Oregon Laws 1910 sec. 297).**

[*Title.*]

WHEREAS the above entitled action has been commenced for the recovery of ..... dollars with interest from ..... 19.., and the plaintiff has filed an affidavit for a writ of attachment in said action and is about to apply for the issuance of such writ of attachment against the property of the defendant C.... D....

NOW, THEREFORE, we, A.... B.... plaintiff in said action, and E.... F.... and G.... H.... his sureties, hereby undertake to pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of such attachment, if the same be wrongful or without sufficient cause, not exceeding the sum of ..... dollars.

Dated this .... day of ....., A. D. 19..

A.... B...., Plaintiff  
E.... F...., Surety.  
G.... H...., Surety.

[*Venue.*]

We, E.... F.... and G.... H.... whose names are subscribed to the above undertaking as sureties, being severally duly sworn, each for himself says: That he is a resident and freeholder within the state of Oregon, and is not a counselor or attorney at law, sheriff, clerk or other officer of any court, and is worth the sum of ..... dollars, over and above all debts and liabilities and exclusive of property exempt from execution.

E.... F....  
G.... H....

[*Jurat.*]

**435. Sheriff's notice of attachment (Oregon Laws 1910 sec. 300).**

[*To be endorsed on the writ before service*]:

COUNTY OF ....., Office of the Sheriff.
--

To R.... S....

TAKE NOTICE that all \* moneys, goods, credits, effects, debts due or owing, \*\* or any other personal property in your possession, or under your control, belonging to the within named defendants or either of them, are attached by virtue of a writ, of which the within is a copy, and you are notified not to pay over or transfer the same to anyone but myself, and you are hereby required to furnish forthwith a written statement of all such property and credits.

J.... K....  
Sheriff.

[If the property to be attached consist of corporate stock or interests therein insert between the \* and the \*\* in the above form the words: all stocks or shares or interests in stocks or shares or profits thereon of the ..... company, a corporation.]

**436. Writ of attachment (Oregon Laws 1910 sec. 298).**

[Title.]

WHEREAS the above entitled action has been commenced for the recovery of ..... dollars with interest from ..... at the rate of .... per cent per annum and the costs of suit and the necessary affidavit and undertaking having been filed as required by law,

NOW, THEREFORE, in the name of the state of Oregon, you are hereby commanded and required to attach and safely keep all the property of the said defendant C.... D.... within your county, not exempt from execution, or so much thereof as may be sufficient to satisfy said plaintiff's demand, namely: the said sum of ..... dollars, besides interest at the rate of ..... per cent. per .... from the .... day of ....., 19.., together with costs and expenses, and of this writ make legal service and due return to me.

[SEAL] WITNESS my hand and seal of said  
..... court, this .... day of .....  
A. D. 19..

L.... M.... Clerk.  
By O.... P....  
Deputy.

*Certificate by Sheriff thereon:*

I, J.... K...., sheriff of ..... county, do hereby certify that I have carefully compared the foregoing copy of writ of attachment with the original thereof; that it is a correct transcript therefrom and of the whole thereof.

Dated this .... day of ....., A. D., 19..

J.... K....

Sheriff of ..... County, Oregon.

By R.... S.... Deputy.

**437. General indemnity bond in attachment (Oregon).**

[*Title.*]

KNOW ALL MEN by these presents, that we, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto J.... K...., sheriff of the county of ....., state of Oregon, in the sum of ..... dollars, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the ..... day of ....., 19..

THE CONDITION of this obligation is such that whereas a writ of attachment has been issued in the above entitled action directed and delivered to the said J.... K.... as sheriff aforesaid, and whereas the said sheriff has been directed by the plaintiff in said action to levy the same upon the following described goods and chattels, [*describe property*]

Now, therefore, if the said parties of the first part, their heirs, executors and administrators, shall well and truly indemnify and save harmless the said sheriff, his heirs, executors and administrators, of and from all damages, expenses, costs and charges, and against all loss and liability which he, the said sheriff, his heirs, executors or administrators shall sustain or in anywise be put to, for or by reason of the attachment, seizing, levying, taking or retention by the said sheriff in his custody, under said attachment of the said property as aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.

In presence of	A.... B.... [Seal]
R.... S....	E.... F.... [Seal]
T.... U....	G.... H.... [Seal]

[Venue.]

E.... F.... and G.... H.... the sureties above named, being severally duly sworn each for himself says: that he is a resident and free- [or house-] holder of the county of ..... and is worth the sum in the said bond specified as the penalty thereof, over and above all his just debts and liabilities exclusive of property exempt from execution.

[Jurat.]

E.... F....  
G.... H....

#### 438. Sheriff's return on attaching personal property (Oregon).

[To be endorsed on writ]:  
[Venue.]

I hereby certify that I received the within named writ of attachment on the .... day of ....., 19.., and executed the same on the .... day of ....., 19.., in ..... county, Oregon, by levying upon and attaching all the right, title and interest of the within named C.... D.... in and to the personal property situated in said ..... county, Oregon, described as follows: [*here describe the property*] and that I have levied upon and attached the same, by [*state manner of levy*].

J.... K....  
Sheriff.

#### 439. Certificate of attachment of real estate (Oregon Laws 1910 sec. 300).

[Title.]  
[Venue.]

I, J.... K...., sheriff of ..... county, do hereby certify that by virtue of a writ of attachment issued out of the ..... court of the state of Oregon, for ..... county, upon the .... day of ....., 19.., in the action wherein A.... B.... is plaintiff and C.... D.... is defendant, said writ being in favor of said plaintiff and against the property of said defendant, and directed to me, I did on the .... day of ....., A. D. 19.., attach the following des-



cribed real property of the within named defendant, C.... D.... to-wit: [*here describe the real estate levied on with legal certainty*].

In witness whereof, I have hereunto set my hand this .... day of ....., A. D., 19.., at .... o'clock ..M.

J.... K....

Sheriff of ..... County, Oregon.

By R.... S.... Deputy Sheriff.

#### 440. Redelivery bond (Oregon Laws 1910 sec. 305).

[*Title.*]

WHEREAS upon a certain writ of attachment issued in the above entitled action on the .... day of ..... 19.., J.... K...., sheriff of ..... county, state of Oregon has attached and taken into custody certain personal property to-wit, [*describe property*]; and whereas, the said property is claimed by the undersigned E.... F.... and the said E.... F.... has made application to said sheriff for the delivery of said property to him;

NOW, THEREFORE, we, E.... F.... as principal and G.... H.... and J.... K.... as sureties, do hereby undertake pursuant to the statute that in case said sheriff delivers said property to the said E.... F.... we will redeliver said property or pay the value thereof to the sheriff to whom execution upon a judgment obtained by the plaintiff in said action may be issued.

Dated ....., 19..

E.... F....

G.... H....

J.... K....

[*Add justification of sureties as in Form 434.*]

#### 441. Undertaking for discharge of attachment (Oregon Laws 1910 sec. 311).

[*Title.*]

WHEREAS, the above named defendant C.... D.... is about to apply for an order discharging the attachment heretofore issued and levied in the above entitled action;

NOW, THEREFORE, we, G.... H.... and J.... K...., sureties, being residents and freeholders [*or householders*] in the state of Oregon, in consideration of the premises, and in consideration of the release from attachment of



**443. Affidavit for attachment (Tex. Civ. Stats. Ann. 1913 art. 240, 241).**

*Title.*]

*Venue.*]

On this .... day of ....., 19.., before the undersigned, the clerk of the ..... court, [*or otherwise give the official title of the officer as the fact may be*] personally appeared A.... B.... the plaintiff in the above entitled action [*or the agent or attorney of the plaintiff, and makes this affidavit in his behalf*] who being duly sworn, says that C.... D.... the defendant above named is justly indebted to the plaintiff in the sum of ..... dollars which became due ....., 19.., [*or in the sum of ..... dollars which will become due ....., 19.., or which will become due in the sums and at the times as follows: state installments to become due and the time at which each installment matures*];

Deponent further says that the said defendant is not a resident of this state [*or state any other of the separate grounds of attachment set forth in sec. 240, if two grounds are relied on state them conjunctively*];

Deponent further says that the attachment herein is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiff will probably lose his debt unless such attachment be issued.

A.... B....

*[Jurat.]*

**444. Attachment bond (Tex. Civ. Stats. 1913 Ann. arts. 244, 245, 246).**

*[Title.]*

*[Venue.]*

We, the undersigned, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, acknowledge ourselves bound to pay to C.... D.... the sum of ..... dollars and .... cents, conditioned that the above bound A.... B.... plaintiff in attachment against the said C.... D...., defendant, will prosecute his said suit to effect, that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment.

Witness our hands at . . . . ., this . . . . day of . . . . .,  
19..

A.... B....  
E.... F....  
G.... H....

Approved this . . . . day of . . . . ., 19..

L.... M....  
Clerk . . . . . Court.

**445. Writ of attachment (Tex. Civ. Stats. 1913 Ann. art. 250).**

**THE STATE OF TEXAS**

to the Sheriff or any Constable of . . . . . County

Greeting:

WE COMMAND YOU that you attach, forthwith, so much of the property of C. . . . D. . . . if to be found in your county, repleviable on security, as shall be of value sufficient to make the sum of . . . . . dollars and the probable costs of suit, to satisfy the demand of A. . . . B. . . . and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before our . . . . . court, in . . . . ., in the county of . . . . . on the . . . . day of . . . . ., 19.., when and where you shall make known how you have executed this writ.

Witness my hand and the seal of said court, this the . . . . day of . . . . ., 19..

[SEAL]

L.... M....  
Clerk . . . . . Court.

**446. Sheriff's return of levy on real estate in attachment (Texas).**

[To be endorsed on writ]:

I CERTIFY that the within writ was delivered to me on the . . . . day of . . . . ., 19.., at . . . . o'clock ..M., and that I executed the same on the . . . . day of . . . . ., 19.., at . . . . o'clock ..M., by levying upon and taking into my possession, as the property of the within named defendant C. . . . D. . . . at . . . . . all of the following described real property, situated in . . . . . county, Texas, to-wit: [*here describe the lands*].

FEES—Executing Writ, \$.....	} By R.... S...., Deputy.	L.... M...., Sheriff.
..... \$.....		..... County, Texas.
..... \$.....		
Total,..... \$.....		

[Venue.]

I hereby certify that the within is a true and correct copy of the writ of attachment in the action in which A.... B.... is plaintiff and C.... D.... is defendant and the above is a true copy of my return thereon so far as the same relates to lands in ..... county.

Given under my hand, this the .... day of ....., 19...  
L.... M...., Sheriff,  
..... County.

447. Plaintiff's indemnity bond (Tex. Civ. Stats. Ann. 1913 art. 253).

WHEREAS a writ of attachment has been issued in an action pending the ..... court in and for the county of ....., state of Texas, in favor of the above named plaintiff, against the said C.... D.... as defendant, which by the direction of the plaintiff has been levied by R.... S.... sheriff of ..... county, upon certain goods and chattels, viz: [here describe the property];

NOW, THEREFORE, in consideration that the said R.... S.... as sheriff has levied (or shall levy) said attachment upon the above described property, we A.... B.... as principal, and E.... F.... and G.... H.... as sureties, acknowledge ourselves bound to pay to the said R.... S...., sheriff as aforesaid, the sum of ..... dollars, conditioned that the above bounden A.... B.... shall well and sufficiently indemnify, save and keep harmless the said R.... S...., sheriff as aforesaid, from all costs, charges, damages and suits that he may incur, or become liable to, in consequence of the levy of said attachment, and shall pay off, discharge and cancel all judgments, damages and costs, that may be rendered against the said R.... S.... as sheriff, by reason of said levy.



Witness our hands this .... day of ....., A. D., 19..

A.... B....

E.... F....

G.... H....

The foregoing bond approved this .... day of .....,  
A. D., 19..

R.... S....,

Sheriff ..... County, Texas.

**448. Replevy bond in attachment (Tex. Civ. Stats. Ann. 1913 art. 258).**

*[The form of bond given in Form 444 may here be followed with the incidental changes made necessary by the fact that it is given by the defendant instead of the plaintiff substituting however the following condition]:* conditioned that should the said defendant C.... D.... be condemned in the action he shall satisfy the judgment which may be rendered therein or shall pay the estimated value of the property attached in said action with lawful interest thereon from the date of this bond.

Witness, etc.

**449. Affidavit and bond of third person claiming title to attached property (Tex. Civ. Stats. Ann. 1913 arts. 257, 7769, 7770, 7774).**

*[The affidavit may follow substantially Form 335; the bond may be as follows]:*

*[Venue.]*

WHEREAS, by virtue of a writ of attachment issued out of the ..... court of ..... county, in favor of A.... B.... plaintiff versus C.... D.... defendant and tested on the .... day of ....., 19.., J.... K...., sheriff of ..... county, Texas, has seized and taken the following described personal property [*insert description*], the value of which property has been assessed by said officer at ..... dollars;

And whereas L.... M.... has claimed said property and presented to said officer his oath in writing that such claim is made in good faith;

NOW, THEREFORE, we, L.... M.... as principal and E.... F.... and G.... H.... as sureties acknowledge ourselves bound to pay to the said A.... B.... the sum of

..... dollars being double the value of said property, conditioned that the said L.... M.... in case he fails to establish his right to said property will return the same to the said J.... K.... or his successor in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase or fruits of the same from the date of this bond, and costs or in case he fails to return said property and pay for the use, hire, increase or fruits thereof, that he will pay the plaintiff the value of the same with legal interest thereon from date, and shall also pay all damages and costs that may be awarded against him.

Witness our hands the .... day of ....., 19..

L.... M....

E.... F....

G.... H....

Approved this .... day of ....., 19..

J.... K....

Sheriff ..... County.

**450. Affidavit for attachment (Utah Comp. Laws 1907 sec. 3066).**

*[Form 309 may be here used, inserting after the words "pledge of personal property" the words, "situate or being within this state," and adding at the end thereof another allegation of fact to-wit; "that the defendant is not a resident of this state", or any other one of the five grounds of attachment stated in sec. 3064 Utah Comp. Laws; if two grounds are stated state them conjunctively.]*

**451. Undertaking for attachment (Utah Comp. Laws 1907 sec. 3067).**

*[Form 312 may be here used inserting after the words "if defendant recover judgment," the words "or if the attachment be wrongfully issued," and by dropping from the form the last condition beginning "and that if said attachment should be discharged, etc."]*

**452. Writ of attachment (Utah Comp. Laws 1907 sec. 3069).**

*[Form 313 may here be used.]*

*[For other proceedings in attachment in Utah following the*

*issuance of the writ reference may be made to forms previously given for use in California, Arizona and Oregon.]*

**453. Affidavit for attachment (Wash. Rem. and Bal. Code 1910 sec. 648).**

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is over the age of twenty-one years and is the plaintiff in the above entitled action, [*or is the agent of the plaintiff in the above entitled action and makes this affidavit in his behalf*]; that C.... D.... the defendant in the said action is justly indebted to said plaintiff in the just and full sum of ..... dollars, over and above all just credits and offsets upon a cause of action founded on contract to-wit: [*here state briefly the contract*] [*or otherwise state the nature of the cause of action according to the fact*]; that the attachment sought herein, by the said plaintiff is not sought, and the said action is not prosecuted to hinder, delay or defraud any creditor or creditors of the said defendant; and that the said defendant [*here state one of the causes of attachment set out in section 648 Rem. and Bal. Code 1910; or if two are stated, state them conjunctively*];

WHEREFORE affiant asks that a writ of attachment be issued in the said above entitled action.

A.... B....

[*Jurat.*]

[*If the debt be not due state the time when it will become due and add "that nothing but time is wanting to fix an absolute indebtedness."*]

**454. Bond for attachment (Wash. Rem. and Bal. Code 1910 sec. 652).**

[*Title.*]

KNOW ALL MEN by these presents, that we, A.... B.... the plaintiff in the above entitled action as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto C.... D.... the defendant therein in the full sum of ..... dollars, to be paid to the said defendant his executors, administrators and assigns, for which payment, well and truly to be made, we jointly and sev-

erally bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this . . . . day of . . . . ., 19. .

THE CONDITION of this obligation is such that, whereas, the said plaintiff is about to sue out a writ of attachment in the above-entitled action for the sum of . . . . . dollars,

NOW, THEREFORE, if the said plaintiff shall prosecute the said action, without delay, and shall and will well and duly pay all costs that may be adjudged to the said defendant in the said action, and all damages which the said defendant may sustain by reason of the attachment not exceeding the amount specified in this obligation as the penalty thereof, should the said attachment be wrongfully, oppressively or maliciously sued out, then this obligation shall be void, otherwise of force.

In presence of:

J. . . . . K. . . . .

L. . . . . M. . . . .

A. . . . . B. . . . . [Seal]

E. . . . . F. . . . . [Seal]

G. . . . . H. . . . . [Seal]

[Venue.]

E. . . . . F. . . . . and G. . . . . H. . . . . being each duly sworn each for himself says that he is one of the sureties who signed the above bond, that he is above the age of twenty-one years, that he is a bona fide resident and freeholder of the county of . . . . ., state of Washington, that he is not a counsellor or attorney at law, sheriff of a county, clerk or other officer of any superior court and that he is worth the full sum of . . . . . dollars over and above all his debts and liabilities and exclusive of property exempt from execution.

E. . . . . F. . . . .

G. . . . . H. . . . .

[Jurat.]

455. Writ of attachment (Wash. Rem. and Bal. Code 1907 sec. 655).

[Title.]

THE STATE OF WASHINGTON

to the Sheriff of . . . . . County,

Greeting:

WHEREAS, a civil action as above entitled has been commenced in the aforesaid court by the plaintiff therein to recover from the defendant above named the sum of . . . . .

dollars, and the necessary affidavit and attachment bond have been filed as required by law;

NOW, THEREFORE, you are hereby commanded to attach and safely keep all the property of the said defendant within your county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand to the amount above stated, together with costs and expenses. And of this writ make legal service and due return.

[SEAL] WITNESS the Honorable J.... K....,  
judge of the said ..... court, and  
the seal thereof, this .... day of .....  
19..

L.... M...., Clerk.

By N.... O....

Deputy.

The above is a true and correct copy of the original attachment left in my hand for service.

Dated this ....., 19..

R.... C....

Sheriff of ..... County, Wash.

#### 456. Redelivery bond in attachment (Wash. Rem. and Bal. Code 1907 sec. 671).

[Title.]

[Follow Form 454 with necessary changes in the parties down to the condition and proceed as follows]:

THE CONDITION of the above obligation is such that, whereas, L.... M.... as sheriff of said county of ....., in the state of Washington, by virtue of a writ of attachment issued out of the above named court, in the above entitled action, has attached and seized the following goods and chattels, and articles of personal property, to-wit: [here describe the property] as the property of the said C.... D.... the defendant above-named.

Now, if the said C.... D.... shall perform the judgment of the court in this action then this bond to be void otherwise of force.

In presence of:

O.... P....

Q.... R....

C.... D.... [Seal]

E.... F.... [Seal]

G.... H.... [Seal]



Approved . . . . ., 19..

R. . . . C. . . .

Sheriff . . . . . County.

[*Venue.*]

E. . . . F. . . . and G. . . . H. . . . being first duly sworn, each for himself, says: I am a resident of . . . . . county, state of Washington, and am not a counselor or attorney at law, sheriff, clerk or other officer of any superior court, and that I am worth: The said E. . . . F. . . . the sum of . . . . . dollars; the said G. . . . H. . . . the sum of . . . . . dollars, over and above all debts and liabilities, and exclusive of property exempt from execution.

E. . . . F. . . .

[*Jurat.*]

G. . . . H. . . .

457. **Affidavit for attachment, undertaking, writ and subsequent papers (Wyo. Comp. Stats. 1910 sec. 4848).**

[*In Wyoming the forms already given in this chapter for use in Nebraska may be used with slight changes; hence it is not deemed necessary to set forth separate forms for use in that state.*]

## CHAPTER XI.

### GARNISHMENT.

#### WISCONSIN

458. Affidavit in garnishment before judgment.
459. The same, when joint liability is claimed.
460. Affidavit in garnishment in aid of execution.
461. Garnishee summons.
462. Garnishee's answer denying all liability.
463. Garnishee's answer stating facts and submitting liability to court.
464. Garnishee's answer showing a liability not subject to garnishment.
465. Garnishee's answer by way of interpleader.
466. Order interpleading claimant.
467. Notice of election to take issue on garnishee's answer.
468. Undertaking for release of garnishee.
469. Verdict of jury against garnishee.
470. Finding of court in favor of garnishee.
471. Judgment in favor of garnishee for costs.
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495. Garnishment affidavit.  
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500. Affidavit, citation and order in garnishment.

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501. Affidavit in garnishment.  
 502. Summons to garnishee.  
 503. Notice of garnishment to defendant.  
 504. Return of service of garnishee summons.  
 505. Bond for release of property garnished.  
 506. Order discharging garnishment, to be endorsed upon the bond.

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507. Summons to garnishee attaching credit.  
 508. Summons to garnishee attaching goods or money.  
 509. Interrogatories to garnishee in attachment.

NEBRASKA

510. Affidavit of garnishment.  
 511. The same, in aid of execution.  
 512. Notice to garnishee in attachment.  
 513. Summons in garnishment in aid of execution.

514. Undertaking by garnishee to retain property or money.

NORTH DAKOTA

515. Affidavit of garnishment.  
 516. Summons in garnishment.

SOUTH DAKOTA

517. Notice to garnishee.

OKLAHOMA

518. Affidavit and summons in garnishment.

OREGON

519. Notice to garnishee.  
 520. Certificate of garnishee.

TEXAS

521. Affidavit in garnishment.  
 522. Bond in garnishment.  
 523. Writ of garnishment.  
 524. Writ of garnishment on judgment.  
 525. Replevy bond in garnishment.

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526. Notice to garnishee.

WASHINGTON

527. Affidavit in garnishment.  
 528. Bond in garnishment.  
 529. Writ of garnishment.  
 530. Sheriff's return of service of writ.  
 531. Defendant's bond to discharge writ.

WYOMING

532. Affidavit and notice in garnishment.

The provisional remedy denominated garnishment has varying forms in the different states. In some it is advanced to the dignity of an action, in others it is simply one of the steps in attachment or execution, but its essential nature is the same in all the states, namely, a means by which intangible or non-leviable assets of a debtor may be reached

and subjected to the payment of the claims of his creditors. The statutes governing garnishment in the various states covered by this work are cited in the note.<sup>1</sup>

<sup>1</sup> Garnishment proceedings, more or less limited in scope, are authorized by the statutes of all the states covered by this work, except California, Montana and South Dakota; and even here, though not dignified by name as garnishment, quite analagous proceedings may be had as a feature of the attachment procedure. The statutes in the various states differ greatly in their provisions, and still more in their form of expression. For this reason, and more especially because this provisional remedy is almost wholly statutory, generalization is impracticable, and the statute must in all cases be strictly followed. One marked characteristic, however, rather sharply divides the states into two groups: in the one garnishment takes the form of an independent action, entirely distinct and apart from attachment; in the other it is merely an enlargement of the attachment procedure, or of execution, and restricted in its application as a subsidiary aid therein. This distinction will appear from the following references:

(1) The procedure is most completely developed, and practically identical in Wisconsin, (Stats. 1913 sec. 2752 et seq.), Kansas, (Gen. Stats. 1909 sec. 5821 et seq.), North Dakota, (Rev. Codes 1905 sec. 6968 et seq.), and Oklahoma, (Comp. Laws 1909 sec. 5711 et seq.). In these states "any creditor may proceed by garnishment against any person . . . who shall be indebted to or have property belonging to the defendant" . . . "in any action to recover damages founded upon contract, express or implied, or in any case in which attachment will lie, or upon judgment or decree, or at any time after the issuing of an execution against property and before the time when

it is returnable." Garnishment will not lie, however, against a municipal corporation, (Wisconsin, Kansas, Oklahoma), nor in an action or in aid of an action for the price or value of intoxicating liquors sold at retail, (Wisconsin), nor upon a liability arising (a) by reason of having drawn, accepted, made, indorsed, or guaranteed any negotiable paper, or (b) by reason of any money or other thing received or collected by an officer by force of legal process in favor of the defendant, or (c) any money in the hands of a public officer, or (d) any money or other thing owing to the defendant unless, before judgment against the defendant, it shall have become due absolutely and without depending on any future contingency; but judgment against the garnishee may be given before the debt is due, payable at the time appointed by the contract, (Wis. Stats. 1913 sec. 2769; Kans. Gen. Stats. 1909 sec. 5836; N. Dak. Codes 1905 sec. 6985; Okla. Comp. Laws 1909 sec. 5725). The garnishment proceeding is an action by the plaintiff against the garnishee and principal defendant as defendants; but no trial is had in the garnishment until the plaintiff has judgment in the principal action, (Wis. Stats. 1913 sec. 2766; Kans. Gen. Stats. 1909 sec. 5832; N. Dak. Codes 1905 sec. 6982; Okla. Comp. Laws 1909 sec. 5721). The principal defendant as well as the garnishee may defend in the garnishment, and the garnishee may come in and defend the principal action, (Wis. Stats. 1913 sec. 2765; Kans. Gen. Stats. 1909 sec. 5831; N. Dak. Codes 1905 sec. 6981; Okla. Comp. Laws 1909 sec. 5720). Other details of the procedure are sufficiently indicated in the forms, with citations to the statutes.

(2) In Minnesota, (Gen. Stats. 1913 sec. 7859 et seq.), the procedure is similar in effect, though expressed in different language. Indebtedness on negotiable paper, and the salary or wages of public officers and employes are liable to garnishment; and there is no exception as to municipal corporations, or intoxicating liquors, (Minn. Gen. Stats. 1913 sec. 7859, 7863, 7864, 7867).

(3) Arizona, (R. S. 1913 sec. 1427 et seq.), Arkansas, (Dig. of Stats. 1901 sec. 3694 et seq.), Texas, (Civ. Stats. Ann. 1913 art. 271 et seq.), and Washington, (Rem. and Bal. Code 1910 sec. 680 et seq.), also fall into the first group. In these states a writ of garnishment may be issued: (1) where an original attachment has been issued; (2) where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid; and (3) where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment. The practice in these states varies somewhat, but in all the garnishee is required to answer in writing, on oath, (Ariz. R. S. 1913 sec. 1437; Ark. Dig. of Stats. 1904 sec. 3698; Tex. Civ. Stats. Ann. 1913 art. 280; Wash. Rem. and Bal. Code 1910 sec. 690), the plaintiff may then enter a denial, (Ark. Dig. of Stats. 1904 sec. 3700), or both the plaintiff and principal defendant may controvert the answer of the garnishee, (Ariz. R. S. 1913 sec. 1447, 1448; Tex. Civ. Stats. Ann. 1913 art. 299, 300; Wash. Rem. and Bal. Code 1910 sec. 700, 701), whereupon the issue shall stand for trial as in other cases, (Ariz. R. S. 1913 sec. 1449, 1450; Ark. Dig. of Stats. 1904 sec. 3700; Tex. Civ. Stats. Ann. 1913 art. 301-305; Wash. Rem. and Bal. Code 1910 sec. 702).

(4) In the second group are, first, Colorado, Missouri, Utah, Wyoming, and Nebraska, where garnishment may be had, either,

upon attachment and upon execution, whenever the property found is insufficient to satisfy the same. The proceedings are commenced by the issuance and service of a writ of garnishment, (Colo. Code Ann. 1911 sec. 130, 133; Mo. R. S. 1909 sec. 2413, 2316, 2414; Utah Comp. Laws 1907 sec. 3090, 3091, 3112), or by service of the order of attachment with a written notice that the garnishee appear, etc. (Wyo. Comp. Stats. 1910 sec. 4856, 4794; Neb. R. S. 1913 sec. 7741), or, on an execution, by the service of summons as in other cases, (Neb. R. S. 1913 sec. 7785). In Colorado and Missouri written interrogatories are delivered to the garnishee when the writ is served, which he is required to answer upon oath, and the answer may be denied, etc., whereupon a trial is had as in ordinary cases, (Colo. Code Ann. 1911 sec. 135, 143, 144; Mo. R. S. 1909 sec. 2425, 2431). The same is true in Utah, except that there is no issue formed in the garnishment, the proceedings winding up with an order by the court to deliver up, etc. (Utah Comp. Laws 1907 sec. 3092, 3095, 3110). In Wyoming and Nebraska the garnishee is required to appear and answer, etc., and if the answer be not satisfactory the plaintiff may proceed by civil action, etc. (Wyo. Comp. Stats. 1910 sec. 4856, 4873, 4877; Neb. R. S. 1913 sec. 7755, 7759).

(5) In Idaho, Iowa and Oregon garnishment may be had in aid of attachment, and is commenced by service of a notice in the manner of an original notice in civil actions, (Iowa Ann. Code 1897 sec. 3935), or by service of a copy of the writ of attachment with a notice, etc. (Idaho Rev. Codes 1908 sec. 4308; Oregon Laws 1910 sec. 300), and the garnishee is required to appear and answer, etc. As an alternative, the plaintiff may, in writing, direct the sheriff to take answer, (Iowa Ann. Code 1897 sec.



458. Affidavit in garnishment before judgment (Wis. Stats. 1913 sec. 2753).

STATE OF WISCONSIN,  
 ..... Court .....County

A.... B....,	}
Plaintiff,	
vs.	
C.... D....,	
Defendant,	
E.... F....,	Garnishee.

[Venue.]

A.... B.... being duly sworn, says that he is the plaintiff above named [or, the agent of the above named plaintiff and makes this affidavit on his behalf]; that a summons has been issued in the above entitled action; that the same is an action to recover damages founded upon [*state the nature of the cause of action, which must be one named in section 2753 or 2731 Wis. Stats. 1913*];<sup>2</sup> that the amount of the said plaintiff's claim against the above named defendant is ..... dollars and.... cents over and above all offsets; that this affiant verily believes that \* E.... F.... is indebted to and has property, real or personal, in his possession and under his control \*\* belonging to the defendant C.... D...., and that such indebtedness and property are, to the best of the knowledge and belief of this affiant, not by

3939) or may deliver to the garnishee written interrogatories, etc. (Idaho Rev. Codes 1908 sec. 4310b; Oregon Laws 1910 sec. 315). The subsequent proceedings are substantially as in the preceding states.

(6) Finally, in California, (C. C. P. 1906 sec. 543-545), Montana, (Rev. Codes 1907 sec. 6666-6668), and South Dakota, (C. C. P. 1908 sec. 209, 216), in attachment proceedings, third persons indebted to, or holding property of, the defendant are brought in by service of a copy of the writ, with a notice

of attachment, and the proceedings wind up simply with an examination of such parties. In South Dakota like proceeding may be had on an execution, (S. Dak. C. C. P. 1908 sec. 217).

<sup>2</sup> If the cause of action be in tort it must also be stated that the defendants or some of them are non-residents, or that their residence is unknown and cannot be ascertained, or that the defendant is a foreign corporation. *Pedlas v. Galbus*, 156 Wis. 341; 146 N. W. 526.

law exempt from seizure or sale upon execution.

A.... B....

Subscribed and sworn to before me  
this .... day of ....., 19..

J.... K...., Notary Public.

**459. The same when joint liability is claimed (Wis. Stats. 1898 sec. 2753).**

[*Proceed as in Form 458 but insert between \* and \*\**]: E.... F.... and G.... H.... jointly are indebted to and have property, real or personal, in their possession or under their control.

**460. Affidavit in garnishment in aid of execution (Wis. Stats. 1913 sec. 2753).**

[*Caption as in Form 458.*]

[*Venue.*]

A.... B.... being duly sworn says that he is the plaintiff above named [*or, the agent of the plaintiff above named*] and that the defendant above named is indebted to said plaintiff in the sum of ..... dollars, over and above all offsets, upon a judgment duly rendered in this court on the .... day of ....., 19.., in favor of the plaintiff and against the said defendant, for ..... dollars and .... cents, damages and costs; and that said sum and interest on said judgment since the date of rendition of said judgment is the amount of his claim;

That on the .... day of ....., 19.., an execution was duly issued out of said court upon said judgment to the sheriff of ..... county against the property of said defendant, and that said execution is returnable on the .... day of ....., 19.., and has not been returned, but is still in said sheriff's hands unsatisfied;

That the affiant verily believes that [*here proceed as in Form 458 from \**].

**461. Garnishee summons (Wis. Stats. 1913 sec. 2754).**

[*Caption as in Form 458.*]

THE STATE OF WISCONSIN to

the said Garnishee [and each of them].

YOU ARE HEREBY SUMMONED, pursuant to the

annexed affidavit, as garnishee of the defendant, C.... D...., and required, within twenty days after the service of this summons upon you, exclusive of the day of service, to answer according to law whether you are indebted to, or have in your possession or under your control any property, real or personal, belonging to such defendant, and to serve a copy of your answer on the undersigned, at ....., in the county of .....; and in case of your failure so to do you will be liable to further proceedings according to law. Of which the said defendant will also take notice.

L.... M...., Plaintiff's Attorney.

P. O. Address, ....., ..... County, Wis.

**462. Garnishee's answer denying all liability (Wis. Stats. 1913 sec. 2759).**

[Caption as in Form 458.]

[Venue.]

E.... F.... being first duly sworn says that on the .... day of ....., 19.., he was served with a garnishee summons in the above entitled action; that he was then and is now in no manner and upon no account whatever indebted or under liability to the defendant C.... D...., and that he then had and has now in his possession, or under his control, no real estate and no personal property, effects or credits of any description whatever, belonging to said defendant or in which he has any interest; and is in no manner liable as garnishee in this action.

E.... F....

Subscribed and sworn to before me  
this.... day of ....., 19..

J.... K...., Notary Public.

**463. Garnishee's answer stating facts and submitting liability to court (Wis. Stats. 1913 sec. 2760).**

[Caption as in Form 458.]

[Venue.]

E.... F.... being duly sworn says that he was served with a garnishee summons in the above entitled action on the .... day of ....., 19.. That affiant was then and is now in no manner and upon no account indebted to or under liability to the defendant unless an indebtedness or liability

exist under the following facts and circumstances, to-wit [*here state fully and succinctly the facts upon which the question of liability depends*].

And affiant further says that he had at the time of the service of said summons and now has in his possession or under his control no real estate and no personal property, effects or credits of any description whatever belonging to the said defendant or in which he has any interest.

E.... F....

[*Jurat.*]

**464. Garnishee's answer showing a liability not subject to garnishment (Wis. Stats. 1913 sec. 2769).**

[*Caption as in Form 458.*]

[*Venue.*]

E.... F.... being duly sworn says that he was served with a garnishee summons in the above entitled action on the .... day of ....., 19.., and that he was then and is now in no manner and upon no account indebted to or under any liability to said defendant except upon a certain negotiable promissory note executed and delivered by affiant to said defendant on or about ....., 19.., for the sum of ..... dollars payable ..... after date, with interest, which note is still due and unpaid. [*Or state fully any other facts showing that the liability of the garnishee to the defendant is one of the liabilities named in Wis. Stats. 1913 sec. 2769, and hence not subject to garnishment.*] And affiant submits that he is not liable as garnishee upon such indebtedness.

And affiant further says that at the time of the service of the said garnishee summons he had and now has in his possession and under his control no real estate and no personal property, effects or credits of any description whatever belonging to said defendant or in which he has any interest, and is in no manner liable as garnishee in this action.

E.... F....

[*Jurat.*]

**465. Garnishee's answer by way of interpleader (Wis. Stats. 1913 sec. 2767).**

[*Caption as in Form 458.*]

[*Venue.*]

E.... F.... being duly sworn says that he was served with a garnishee summons in the above entitled action on the .... day of ....., 19.., and that he was then and is now in no manner and upon no account whatever indebted or under liability to the defendant C.... D.... and that he had then and now has in his possession or under his control no real estate and no personal property, effects or credits of any description whatever belonging to said defendant or in which he has any interest, except it be as hereinafter alleged, and that he is in no manner liable as garnishee in this action unless it be upon the facts and circumstances hereinafter stated, upon which he respectfully submits the question to the court, to-wit:

The affiant admits that he is indebted in the sum of ..... dollars upon [*here state the nature of the indebtedness*] and the defendant makes claim that the said sum is due to him from the affiant and that one [*name the claimant*] who resides at [*give residence*] also makes claim that the said sum is due from this affiant unto him.

Affiant further states that he has in his possession and under his control the following described personal property [*insert description*] and that the defendant, C.... D...., and one [*name claimant*] who resides at [*residence*] each make claim to said property.

That the affiant is not in collusion with either, and is unable to determine which of said claimants is entitled to said property, and makes this affidavit as an answer to said garnishment and also for the purpose of a motion that said [*name claimant*] be interpleaded as a defendant in this garnishee action, and that affiant may pay said sum and deliver said property into court and have a receipt therefor and be thereby discharged from all liability to any of the parties for the same.

E.... F....

[*Jurat.*]

**466. Order interpleading claimant (Wis. Stats. 1913 sec. 2767).**

AT A GENERAL [*or, SPECIAL*] TERM of the Circuit Court in and for ..... County, State of Wisconsin, begun



and held at the Court House in the City of ..... in said County, and on the .... day of ....., 19..

PRESENT, Hon. J.... K....., Circuit Judge, Presiding.

A.... B....,	}
Plaintiff,	
vs.	
C.... D....,	
Defendant,	
E.... F....,	
Garnishee.	

On reading and filing the affidavit of E.... F...., garnishee in this action, and on motion of J.... K....., attorney for said garnishee;

ORDERED that [*name of claimant*] be interpleaded as defendant in this garnishee action.

That notice thereof setting forth the facts on which this order is based be served on said claimant so interpleaded, with a copy of this order, such notice to be subscribed by the plaintiff's attorney.

That after service of such notice with a copy of this order the said garnishee pay to the clerk of this court the sum of ..... dollars, the amount claimed by the defendant in the action and also by said claimant, and that the clerk give him a receipt therefor which shall be a complete discharge of said garnishee from all liability to any party for the amount so paid; and that the amount so paid be held by the clerk subject to the further order of the court.

That such notice, with a copy of this order, be served on the said claimant so interpleaded by delivering a copy of said notice and order to the said claimant and leaving the same with him personally. [*The notice with a copy of the order are to be served in the manner required by law for the service of a summons, hence the order should require personal service in accordance with Wis. Stats. 1913, secs. 2636, 2637, if possible; but if it be necessary to serve by publication as provided for in section 2639 the order should so provide, and the forms given in Chapter VII should be followed in directing the manner of service.*]

Dated ....., 19..

By the Court:

L.... M....., Circuit Judge.

**467. Notice of election to take issue on garnishee's answer (Wis. Stats. 1913 secs. 2759-2763).**

[Caption as in Form 458.]

Sir:

Please take notice that the plaintiff in this action elects to take issue on the answer of E.... F...., garnishee herein, to the garnishee summons, and will maintain him to be liable as garnishee.

Dated at ..... this .... day of ....., 19..

N.... O....,

To R.... S...., Esq.,

Plaintiff's Attorney.

Attorney for E.... F...., garnishee.

**468. Undertaking for release of garnishee (Wis. Stats. 1913 sec. 2771).**

[Caption as in Form 458.]

WHEREAS, E.... F.... has been summoned as garnishee of the defendant in the above entitled action; and whereas the said defendant desires to have said garnishment released in the manner provided by law;

NOW, THEREFORE, we, G.... H...., merchant, and J.... K...., farmer, both of ..... in said county and state of Wisconsin, and freeholders in said state, do hereby undertake that we will on demand, pay to the plaintiff in this action the amount of the judgment, with all costs, that may be recovered against such defendant in this action, not exceeding the sum of five hundred dollars. [*This sum must be not less than double the amount of the indebtedness as specified in the affidavit of garnishment, unless the court upon application directs a less sum.*]

Dated ....., 19..

G.... H....

J.... K....

In presence of:

L.... M....

O.... P....

[Venue.]

G.... H.... and J.... K...., the sureties on the foregoing bond, being duly sworn on oath each for himself says: I am a resident freeholder within the State of Wisconsin, and have property within said state worth over and above all my just debts and liabilities, exclusive of property exempt from

execution, the sum set out and stated below, that is to say: I, G.... H...., am worth the sum of ..... dollars; I, J.... K...., am worth the sum of ..... dollars.

[*Jurat.*]

Above bond approved ....., 19..

L.... M....

Clerk ..... Court.

G.... H....

J.... K....

*[A copy of this undertaking, with notice of time and place of filing, must be served on the plaintiff, and the plaintiff may except to its sufficiency within three days thereafter, in which case the sureties must justify in like manner as bail upon arrest. Wis. Stats. 1913, secs. 2771, 2704, 2705, 2706.]*

#### 469. Verdict of jury against garnishee (Wisconsin).

[*Caption as in Form 458.*]

WE, the jury impaneled and sworn to try the issue in this action between A.... B...., plaintiff, and E.... F...., garnishee, do find for the plaintiff: that the said E.... F.... is liable as garnishee; that at the date of the service of the garnishee summons herein the said garnishee was indebted to the said C.... D...., defendant, in the sum of ..... dollars, and that said indebtedness was absolute and subject to garnishment; that the said garnishee also, at the date of such service, had property in his possession and under his control belonging to said defendant and liable to garnishment, to-wit [*here describe the property and find its value.*]

Dated ....., 19..

J.... K....

Foreman.

#### 470. Finding of court in favor of garnishee (Wisconsin).

[*Caption and title in garnishee action, as in Form 466.*]

This action coming on to be tried upon the issue joined upon the answer of E.... F...., as garnishee, and the same having been tried by the court, a jury trial having been waived in open court; the court finds, as facts in said garnishee action,

*First [state facts found as in the case of findings in the trial of an action by the court].*

And the court further finds as conclusions of law, that said E.... F.... is not liable as garnishee, and is entitled to judgment for costs.

Let judgment be entered accordingly.

By the Court:

L.... M...., Judge.

**471. Judgment in favor of garnishee for costs (Wisconsin).**

[Caption and title as in Form 466.]

This action being at issue between the plaintiff and E.... F...., garnishee, and having been tried at said term by the court, a jury trial having been duly waived; and the court having filed its findings, wherein it finds as facts that the answer of said garnishee is true, and as conclusions of law that said E.... F.... is not liable as garnishee, and ordered judgment accordingly [*or, and the jury having returned a verdict therein wherein it is found that, here insert substance of the verdict*] and the court having ordered judgment for the garnishee upon such verdict;

Now, on motion of G.... H...., attorney for said garnishee,

IT IS CONSIDERED AND ADJUDGED that the said E.... F.... do have and recover of the said plaintiff, A.... B...., the sum of ..... dollars, his costs as taxed and allowed herein.

By the Court:

J.... K...., Clerk.

**472. Findings against garnishee (Wis. Stats. 1913 sec. 2766).**

[Caption as in Form 466.]

The issue joined in this garnishee action coming on for trial at said term, and having been tried by the court, G.... H...., Esq., appearing for the plaintiff and J.... K...., Esq., appearing for the defendant, and L.... M...., Esq., appearing for said garnishee, I, the judge before whom said issue was tried, do find as MATTERS OF FACT in said garnishee action:

I. That at the time of the service of the garnishee summons on said garnishee, to-wit, the .... day of .....,

19.., the said garnishee was indebted to C.... D...., the defendant in the principal action, in the sum of ..... dollars, presently and absolutely due [*here state the consideration of the debt as*], for merchandise theretofore sold and delivered by defendant to said garnishee.

II. That said garnishee at the time of said service had in his possession and under his control the following described personal property and effects belonging to the said defendant, as bailee thereof, and with no lien or interest therein, to-wit, [*here describe the same and give its value*].

And as CONCLUSIONS OF LAW from said facts I find that the said E.... F.... is liable as garnishee to the plaintiff upon said indebtedness in the sum of ..... dollars, and also that he is liable as such garnishee by reason of the said personal property in his hands, and that the plaintiff is entitled to have the said indebtedness paid and said property delivered over to be applied upon the judgment in his favor against said defendant.

And it appearing that the plaintiff has recovered judgment in the principal action against the defendant for the sum of ..... dollars damages and costs, which judgment remains wholly unsatisfied, I further find that the plaintiff is entitled to judgment against said garnishee, adjudging:

1. That he is liable as garnishee aforesaid.
2. That he pay over to the sheriff of ..... county the said indebtedness due to the defendant, to-wit, the sum of ..... dollars and interest thereon from the ... day of ....., 19.., to be applied toward the satisfaction of said judgment against the defendant.
3. That he deliver over, within ten days after the service on him of a certified copy of this judgment, all the said personal property above described to the sheriff.
4. That said sheriff sell and dispose of the said property above described in the same manner as if levied upon execution, and make due return of such sale.
5. That the plaintiff recover his costs of this garnishee action, to be taxed, and have execution therefor.

[*Add any other provisions necessary to protect the interests of all parties.*]

By the Court:  
R.... S...., Circuit Judge.



**473. Judgment against garnishee (Wis. Stats. 1913 sec. 2766).**

[Caption as in Form 466.]

This action having been tried before the court, .... K...., Circuit Judge, presiding, and the court having filed its findings of fact and conclusions of law, which are of record;

And the plaintiff having recovered judgment against said defendant, C.... D...., in the principal action, for the sum of ..... dollars, damages and costs, and the court having ordered and directed judgment as herein adjudged against said garnishee;

NOW, on motion of L.... M...., attorney for the plaintiff,

IT IS ORDERED AND ADJUDGED: 1. That the said E.... F...., garnishee, do forthwith deliver to the sheriff of ..... county the said property in said findings described.

2. That the said sheriff, on receipt of said property, make sale thereof in the same manner as if seized upon execution, and apply the same upon the execution that may be issued in said principal action.

3. That said E.... F...., garnishee, pay over to the said sheriff, to be applied on said judgment against the defendant, C.... D...., the amount of his indebtedness to said C.... D...., to-wit, the sum of ..... dollars, and interest thereon, from the .... day of ....., 19.., to the day of such payment, and that upon receipt thereof the sheriff apply the same towards the satisfaction of said judgment against said C.... D...., or so much thereof as may be necessary for that purpose.

4. That the said sheriff return any residue of the said property or indebtedness that may remain after satisfying said principal judgment, to the said garnishee, [*or, defendant, as the court may have ordered*].

5. That said plaintiff, A.... B...., do have and recover of the said E.... F...., in addition to his liability as garnishee, the sum of ..... dollars, his costs of this action, and that the plaintiff have execution therefor.

6. That said garnishee make the said delivery and payment as herein adjudged within ten days after the service on him of a certified copy of this judgment.

7. That the said garnishee be and is hereby acquitted and discharged from all demands by the said defendant, C.... D...., or his representatives, for all moneys, goods, effects and credits which he shall have paid, delivered or accounted for by force of this judgment.

By the Court:

O.... P...., Clerk.

**474. Affidavit for examination of Garnishee (Cal. C. C. P. 1906, sec. 545).**

[Title.]

[Venue.]

A.... B...., being duly sworn, deposes and says:

I. That he is the plaintiff above named; that this action was commenced in this court by the filing of the complaint, affidavit and undertaking on attachment, and the issuance of the summons and writ of attachment thereon, and that said attachment is still in force.

II. Deponent further says, that he gave information in writing to the sheriff of said ..... county, that one E.... F.... had in his possession or under his control certain credits [*or other personal property*] belonging to the defendant, and said sheriff on the .... day of ....., 19.., served upon said E.... F.... a copy of said writ, and a notice that said credits [*or other personal property*] were attached in pursuance of said writ; that said E.... F.... thereupon replied [*state reply*].

III. But this deponent is informed and believes, notwithstanding said reply, that the said E.... F.... has in his possession or under his control credits [*or other personal property*] belonging to the defendant as aforesaid, and prays that the said E.... F.... may be required to attend before this court, and be examined on oath respecting the same.

A.... B....

[Jurat.]

[*This should be preceded by service of the writ of attachment, together with a notice similar to Form 488, as used in Idaho, except as to the interrogatories.*]

**475. Citation to garnishee (Cal. C. C. P. 1906, sec. 545).**

[Title.]

The People of the State of California,

To E.... F....,

Greeting:

WHEREAS, an attachment has been issued out of this court, against the property of the defendants in the above-entitled action, and is still in force:

And whereas it has been alleged and made to appear that you have in your possession or under your control certain debts, moneys, effects, credits, and other property owing to or belonging to said defendant:

YOU ARE THEREFORE COMMANDED, to be and appear before me at ....., on the .... day of ....., 19.., at .... o'clock ....., and then and there to be examined on oath concerning the same; and you are further commanded not to pay, transfer, return or otherwise part with or dispose of any such debts, moneys, effects, credits, or other property, until duly released according to law.

Given under my hand this .... day of ....., 19..

J.... K....

.....Judge.

**476. Order after examination of garnishee (Cal. C. C. P. 1906 sec. 545).**

[Title.]

A citation having been duly issued and served in the above entitled action requiring E.... F.... of ..... to appear before the undersigned and be examined on oath respecting debts owing by him to the above named defendant and credits and other personal property in his possession or under his control belonging to the defendant;

And said E.... F.... having been duly examined before the undersigned respecting the said matters pursuant to said notice; and it appearing upon said examination that the said E.... F.... has in his possession certain personal property belonging to the defendant described as follows: [*Describe the property; if it be property capable of manual delivery, continue as follows*]:

IT IS NOW HERE ORDERED that said E.... F.... forthwith deliver said property to L.... M.... sheriff of ..... county in order that he may hold the same under the writ of attachment heretofore issued in this action;

[If any terms are prescribed such as the preservation of liens insert them here.]

[If the garnishee is indebted to the defendant continue as follows]:

And it appearing further that the said E.... F.... is indebted to the said C.... D.... in the sum of ..... dollars;

IT IS ORDERED that the said E.... F.... pay said debt to the said sheriff, the moneys so paid to be held by said sheriff under said writ of attachment; and such payment to constitute a discharge of said indebtedness.

[If the property be incapable of manual delivery]:

It appearing further certain of said property is incapable of manual delivery, to-wit: [describe same];

IT IS ORDERED that the said E.... F.... execute and deliver to said sheriff a memorandum of the same containing the amount and description thereof and that he remain liable to the plaintiff for the amount thereof until said attachment be discharged or any judgment recovered by the plaintiff in this action be satisfied.

Dated ....., 19..

J.... K....

.....Judge.

#### 477. Affidavit and bond in garnishment (Ariz. R. S. 1913 secs. 1428-1429).

[Title.]

[Venue.]

A.... B.... being first duly sworn, says: that he is the plaintiff [or the agent of the plaintiff] in the above entitled action, \* that the defendant C.... D.... is indebted to the plaintiff in the sum of ..... dollars, and that said debt is just, due and unpaid, and that the defendant has not within plaintiff's knowledge, property in his possession within the state of Arizona, subject to execution, sufficient to satisfy such debt, and that this garnishment is not sued out to injure either the defendant or the garnishee.\*\*

Affiant further says that he has reason to believe that E.... F...., residing at ..... county of ....., state of Arizona is indebted to the defendant or has effects in his hands belonging to the defendant.

WHEREFORE the plaintiff asks for the issuance of a writ of garnishment against the said E.... F....

A.... B....

[*Jurat.*]

*Bond.*

We, the undersigned, A.... B.... as principal and G.... H.... and J.... K.... as sureties, acknowledge ourselves bound to pay to C.... D.... the sum of ..... dollars, conditioned that the above-bounden A.... B...., plaintiff in the above entitled action against C.... D...., defendant, will prosecute the said suit to effect, and that he will pay all damages and costs sustained by the defendant by reason of the wrongful suing out of such garnishment.

Witness our hands this .... day of ....., 19..

A.... B....

G.... H....

J.... K....

[*Venue.*]

G.... H.... and J.... K...., the sureties in the within undertaking, being duly sworn, say, each for himself and not one for the other, that he is worth the sum of ..... dollars over and above all his debts and liabilities, exclusive of property exempt from execution, and that he is a resident and freeholder within the state of Arizona.

G.... H....

J.... K....

[*Jurat.*]

This bond approved this .... day of ....., 191 ..

L.... M....

Clerk of ..... Court.

**478. Affidavit for garnishment in aid of attachment  
(Ariz. R. S. 1913 secs. 1427-1428).**

[*Title.*]

[*Venue.*]

[*Proceed as in the immediately preceding affidavit substituting between the \* and the \*\* the following*]: that the above entitled action has been commenced in said court and an original writ of attachment issued therein on the .... day of ....., 19.., which has been delivered to the sheriff of ..... county, in said state, for execution and return.



[In this case as well as in the case of garnishment in aid of execution the statutes of Arizona do not seem to require any bond.]

479. Writ of garnishment (Ariz. R. S. 1913 sec. 1432).

THE STATE OF ARIZONA,

To the Sheriff or any Constable of . . . . .,

Greeting:

WHEREAS, in the court of . . . . . county, state of Arizona, in a certain case wherein A. . . . B. . . . is plaintiff and C. . . . D. . . . is defendant, the plaintiff, claiming an indebtedness against the said C. . . . D. . . . of . . . . . dollars, besides interest and costs of suit, has applied for a writ of garnishment against E. . . . F. . . . who is alleged to be a resident of your county, [or to be within your county as the case may be];

THEREFORE, you are hereby commanded forthwith to summon the said E. . . . F. . . . if to be found within your county, to be and appear before the said court within ten days after the service of summons, exclusive of the day of service—or, if served out of the county, within twenty days—then and there to answer upon oath what, if anything, he is indebted to the said C. . . . D. . . . and was when this writ was served upon him and what effects, if any, of the said C. . . . D. . . . he has in his possession, and had when this writ was served, and what other persons, if any, within his knowledge, are indebted to the said C. . . . D. . . . or have effects belonging to him in their possession [if the garnishee be an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or interested therein add, and further to answer what number of shares if any the said C. . . . D. . . . owns in such company and owned when such writ was served].

HEREIN FAIL NOT, but of this writ make due return as the law directs.

Given under my hand and the seal of the court, this . . . . day of . . . . ., 19..

[SEAL]

L. . . . M. . . .  
Clerk.

**480. Replevy bond in garnishment (Ariz. R. S. 1913 sec. 1436).**

*[In this bond the general form of the bond given in Form 482 may be followed, substituting in lieu of the condition there given the following]:* conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit *[or for the payment of the value of the effects, debts, shares or claims garnished in said proceeding as the case may be.]*

**481. Writ of garnishment (Ark. Dig. of Stats. 1904 sec. 3694).**

*[Title.]*

*[Venue.]*

THE STATE OF ARKANSAS,

To the Sheriff of . . . . . County,

Greeting:

WHEREAS the above entitled action has been commenced and a complaint filed therein to recover of the defendant, C. . . . D. . . . , the sum of . . . . . dollars debt, and also the sum of . . . . . dollars damages, with interest thereon at . . . . per cent per annum, from the . . . . day of . . . . . , 19. . . until paid, together with the costs; and

Whereas, it is alleged by the said plaintiff that he has reason to believe that E. . . . F. . . . has in his hands and possession, goods, chattels, moneys, credits and effects belonging to the said defendant *[or is indebted to the said defendant]*

NOW, THEREFORE, you are hereby commanded to summon the said E. . . . F. . . . to appear before the judge of our . . . . . court of . . . . . county, at the courthouse in the county aforesaid, on the first day of our next term, at a court to be holden on the . . . . day of . . . . . next, then and there to answer what goods, chattels, moneys, credits and effects he may have in his hands or possession belonging to the said defendant, C. . . . D. . . . to satisfy the claim alleged to be due in said complaint; and also to answer such further interrogatories as may be exhibited against . . . . . and that you will make due return of this writ to our said . . . . . court.

IN TESTIMONY whereof, I have here-  
unto set my hand and affixed the seal  
of said court, at . . . . ., Arkansas, on  
this . . . . day of . . . . ., 19..

[SEAL]

L. . . . M. . . .

Clerk.

*[In case of garnishment after judgment substitute a recital of the obtaining of judgment and the date and amount thereof in place of the recital of the commencement of the action in the above form.]*

**482. Bond in garnishment before judgment (Ark. Dig. of Stats. 1904 sec. 3694).**

[Title.]

WE UNDERTAKE and are bound to the defendant C. . . . D. . . . in the sum of . . . . . dollars [*this sum to be double the amount for which the garnishment is issued*] that the plaintiff A. . . . B. . . . will pay to the defendant C. . . . D. . . . all damages that he may sustain by reason of the wrongful bringing of his suit or the issuing of the garnishment.

Dated . . . . ., 19..

A. . . . B. . . .

E. . . . F. . . .

G. . . . H. . . .

Approved the . . . . day of . . . . ., 19..

L. . . . M. . . .

Clerk . . . . . Court.

**483. Interrogatories in garnishment (Ark. Dig. of Stats. 1904 sec. 3698).**

[Title.]

Comes said plaintiff and files the following allegations and interrogatories:

Said plaintiff alleges:

*First*—That said E. . . . F. . . ., the garnishee herein, is indebted to said C. . . . D. . . ., the defendant, to-wit: in the sum of one hundred dollars.

*Second*—That said garnishee has in his hands and possession certain goods, chattels, moneys, credits and effects belonging to said defendant of the value of one hundred dollars.

And the plaintiff propounds to the said garnishee the following interrogatories:

*First*—Are you indebted to the defendant; if so, how were you indebted, and for what amount?

*Second*—Have you in your hands and possession, on or after the service of the writ herein any goods, chattels, moneys, credits or effects belonging to said defendant; if so, what was the nature and value thereof?

A . . . . B . . . .

Plaintiff.

[*To be filed with the clerk of the court from which the writ of garnishment issued, at any time before the return day; it is not necessary that they be filed in open court, or that the filing appear of record. Moreland v. Pe'ham, 7 Ark. 338; Richardson v. White, 19 Ark. 241.*]

#### 484. Garnishment summons, interrogatories and answer (Colo. Code Ann. 1911 secs. 132, 135).

[*Title.*]

THE PEOPLE of the State of Colorado,

To G . . . . H . . . ., Garnishee:

YOU ARE HEREBY NOTIFIED that you are attached as garnishee in the above entitled action, and you are commanded not to pay any debt due or to become due from yourself to the said C . . . . D . . . . and E . . . . F . . . ., defendants, or either of them, and that you must retain possession and control of all personal property, effects and choses in action of said C . . . . D . . . . and E . . . . F . . . ., defendants, or either of them, in order that the same may be dealt with according to law.

You are required to answer the interrogatories attached hereto within twenty days from the date of the service of this writ upon you, if you are served in the county in which said action is brought, otherwise within forty days from the date of such service.

In case of your failure within the time aforesaid, the plaintiff may apply to the court for relief against you ex parte.

Given under my hand this . . . . day of . . . . ., A. D. 19 . .

L . . . . M . . . ., Sheriff.

By N . . . . O . . . .

Deputy Sheriff.

*Interrogatories and Answer.*

[Title.]

To G.... H....:

1. Are you in any manner indebted to the defendants or either of them either in property or money, and is the same now due; if not, when is the same to become due? State fully all particulars.

Answer: .....  
.....

2. Have you in your possession, in your charge, or under your control, any property, effects, goods, chattels, rights, credits, or choses in action of said defendants or either of them, or in which he is interested. If so, state what is the value of the same, and state fully all the particulars.

Answer: .....  
.....

3. Do you know of any debts owing to the said defendants or either of them, whether due or not due, or any property, effects, goods, chattels, rights, credits or choses in action belonging to him, or in which he is interested, and now in the possession or under the control of others? If so, state the particulars.

Answer: .....  
.....

G.... H....  
Garnishee.

[Venue.]

I, G....H...., do solemnly swear that the answers to the foregoing interrogatories by me subscribed are true so help me God.

G.... H....

[Jurat.]

**485. Traverse of garnishee's answer (Colo. Code Ann. 1911 sec. 143).**

[Title.]

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff in the above entitled action. That a summons in garnishment has been issued in the above entitled action and served on one G.... H.... together with certain interroga-



tories proposed by the plaintiff. That one of the interrogatories so proposed by the plaintiff was the following, [*quote interrogatory*] and that in reply thereto the said garnishee has duly made and filed the following answer; [*quote answer*] that the said answer so made to said interrogatory is not true and the said plaintiff hereby traverses the same.

This affiant further alleges [*here state any new matter which if true would charge the garnishee with liability.*]

A.... B....

[*Jurat.*]

**486. Petition for intervention in garnishment (Colo. Code Ann. 1911 sec. 145).**

To the Honorable the ..... Court of ..... County,

THE PETITION of L.... M.... respectfully represents that in certain garnishment proceedings against one G.... H.... now pending in this court in the above entitled action it is sought by said plaintiff to charge the said G.... H.... as garnishee of the defendant C.... D.... because, as it is alleged by said plaintiff, the said garnishee is indebted to the said defendant in the sum of ..... dollars for the purchase price of one certain horse alleged to have been sold by said defendant to said G.... H.... [*or otherwise describe the debt, property or chose in action sought to be reached in the garnishment proceedings.*]

Your petitioner further alleges that in truth and in fact the said indebtedness so claimed to be owing by the said G.... H.... to the said C.... D.... [*or the said property so claimed to be held by the said G.... H.... for the benefit of the said C.... D....*] is owing to and the property of this affiant.

WHEREFORE petitioner prays to be allowed to intervene in said garnishment proceeding and have his said claim tried and determined.

L.... M....

[*Jurat.*]

**487. Affidavit and citation in garnishment (Idaho Rev. Codes 1908 sec. 4308, 4310).**

[*The forms already given in this chapter for use in California viz. Forms 474 and 475 may be here used.*]

**488. Notice of garnishment and interrogatories (Idaho Rev. Codes 1908 secs. 4308, 4310b).**

To E. . . . F. . . .

TAKE NOTICE that a writ of attachment of which the within [*or annexed*] is a true copy, has been issued and to me delivered in the above entitled action and that all moneys, goods, credits, effects, debts due or owing, shares of stock in any corporation or association, and all other personal property in your possession or under your control belonging to the defendants named in said writ, or either of them, are attached in pursuance of said writ, and you are hereby notified not to pay over or transfer the same to any one but myself.

Please furnish statement.

You are also required to make full and true answers, under oath, to the following interrogatories and to file them in this cause, within five days after the service upon you of this notice. Should you fail so to do, the plaintiff may take judgment against you by default, or the court may, upon motion, compel you to answer by attachment.

1st. At the time of the service of the garnishment, had you in your possession, or under your control, any property, money, or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects.

2nd. At the time of the service of the garnishment, did you owe the defendant any money, or do you owe him any now? If so, state how much, on what account and when did it become due? If not due, when will it become due?

*[Other proper and pertinent questions which may tend to show a liability on the part of the garnishee to the defendants or either of them may be added.]*

Dated . . . . ., 19..

L. . . . M. . . .

Sheriff . . . . . County.

*[Receipt for money paid by garnishee, to be endorsed on garnishee's copy of notice]:*

RECEIVED of E. . . . F. . . . the within named garnishee . . . . . dollars owing by him to the defendant C. . . . D. . . . ; and the liability of said garnishee to said defendant C. . . . D. . . . is hereby discharged to that amount.

Dated . . . . ., 19..

L. . . . M. . . .

Sheriff . . . . . County.

**489. Plaintiff's denial of garnishee's answer (Idaho Rev. Codes 1908 sec. 4310e).**

[Title.]

And now comes the said plaintiff and denies all of the statements of fact contained in the answer of the garnishee G. . . . H. . . . filed in the above entitled proceeding, [or if the denial be only a part state what part].

The said plaintiff further alleges [here state specially any facts or grounds on which a recovery is sought against the garnishee.]

A. . . . B. . . .

**490. Notice of garnishment and interrogatories (Iowa Ann. Code 1897 secs. 3935-3939).**

[Title.]

To E. . . . F. . . .

[If more than one are garnished, name all]:

You [and each of you] will take notice that you are hereby attached as garnishee in the above entitled action; and that you are forbidden to pay any debt due by you to the above named defendant, or hereafter to become due, and that you are required to retain possession of all the property of the said defendant now or hereafter being in your custody, or under your control, in order that the same may be dealt with according to law.

And you are further notified to appear at the next term of said court on the first day thereof, to-wit, on the . . . . day of . . . ., 19. . ., at the court house in the city of . . . ., in said county and state, and then and there to answer such questions as may be propounded to you, or you will be liable to pay the entire judgment which the said plaintiff may obtain against the said defendant.

G. . . . H. . . .

Sheriff of . . . . County, Iowa.

*Direction to be endorsed on writ at plaintiff's option.*

To the Sheriff of . . . . County, Iowa.

You are hereby directed and required to take the answer of E. . . . F. . . ., garnished herein in the manner provided by law, and attach said answer to your return upon the within writ of attachment.

Dated . . . ., 19. .

A. . . . B. . . .  
Plaintiff.

*Questions to be answered by the garnishee.*

[Title.]

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money, or property which is not yet due? If so, state the particulars.

ANSWER: .....

2. Have you in your possession or under your control any property, rights or credits of the said defendant? If so, what is the value of the same, and state all the particulars.

ANSWER: .....

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, rights or credits belonging to him and now in the possession or under the control of others? If so, state the particulars.

ANSWER: .....

[The answer should be written in full below each question and the following oath appended]:

[Venue.]

I, E.... F...., the garnishee in the above entitled action, do solemnly swear that the foregoing answers made by me are full, true and complete answers to the above questions touching wherein I have been attached as garnishee. So help me God.

E.... F....

[Jurat.]

**491. Notice of garnishment to defendant where garnishee has answered satisfactorily (Iowa Ann. Code 1907 sec. 3947).<sup>3</sup>**

[Title.]

To C.... D...., the above named defendant:

YOU ARE HEREBY NOTIFIED that E.... F.... has been heretofore attached as garnishee in said court in the above entitled cause, pursuant to which he has answered, and unless you appear on the first day of the next term of

<sup>3</sup>This notice is jurisdictional. It must be served at least ten days before judgment against the gar-

nishee, which cannot legally be entered in its absence. Williams v. Williams, 61 Iowa, 612.

said court, commencing at . . . . ., in said county and state, on the . . . . day of . . . . ., 19.., and show cause if any you have why judgment should not be rendered condemning the property or debt in the hands of said garnishee belonging to you, as shown by the answer of the said garnishee, judgment will be rendered condemning said property or debt, and the same will be dealt with according to law for the use of said plaintiff.

L. . . . M. . . .  
Attorney for Plaintiff

G. . . . H. . . .  
Sheriff . . . . . County.

**492. The same, where garnishee is required to answer in court (Iowa Ann. Code 1897 sec. 3947).**

[Title.]

To C. . . . D. . . . the defendant above named.

YOU ARE HEREBY NOTIFIED that on the . . . . . of the . . . . ., 19.., said E. . . . F. . . . was summoned as garnishee in above entitled action and was required to appear at . . . . . county, Iowa, on the first day of the next term of said court, to-wit: the . . . . day of . . . . ., 19.., and then and there answer such interrogatories as might be propounded touching his liability as garnishee; at which time and place you can appear and show cause, if any you have, why judgment condemning the property or debt in the hands of said garnishee in which you have any interest, should not be entered, and that unless you appear thereto and defend at the same time said garnishee is required to appear, default will be entered against you and judgment entered in accordance with the statute.

L. . . . M. . . .  
Attorney for Plaintiff.

G. . . . H. . . .  
Sheriff of . . . . . County, Iowa.

**493. Notice to garnishee upon execution (Iowa Ann. Code 1907 secs. 3975, 3976).**

[Title.]

To E. . . . F. . . .

YOU ARE HEREBY NOTIFIED that you are attached as garnishee in a cause now determined in the . . . . . court of . . . . . county, in the state of Iowa, wherein A. . . . B. . . .



was plaintiff, and C. . . . D. . . . was defendant, and that you are forbidden to pay any debt due by you to the said defendant, or hereafter to become due, and that you are required to retain possession of all property of the said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

And you are further notified to appear on the first day of the next term of said court, commencing at . . . . ., in said county, the . . . . day of . . . . ., 19.., then and there to answer such interrogatories as may be propounded to you, or you will be liable to pay the entire judgment which the said plaintiff has obtained against the said defendant.

Dated this ..... day of ....., 19....

L. . . . M. . . .

Sheriff of . . . . . County, Iowa.

**494. Notice to garnishee of default (Iowa Ann. Code 1907 sec. 3943).**

[Title.]

To E. . . . F. . . ., Garnishee.

YOU ARE HEREBY NOTIFIED that on account of your failure to appear and answer the interrogatories to be propounded to you as garnishee in accordance with the notice of garnishment heretofore served upon you in the above entitled action you are presumed to be indebted to the defendant above named to the full amount of the plaintiff's demand in this action; and you are hereby notified further to be and appear, before noon of the second day of the . . . . . term 19.., of said court, which will commence on the . . . . day of . . . . ., 19.., at the court house in . . . . ., in said county, and show cause why judgment should not be rendered against you for the amount of the plaintiff's claim, to-wit, the sum of . . . . . dollars.

L. . . . M. . . .

Attorney for Plaintiff.

**495. Garnishment affidavit (Kans. Gen. Stats. 1909 sec. 5822).**

[Follow Forms 458, 459 and 460, inserting however an allegation to the effect that the defendant has not property liable to execution sufficient to satisfy the plaintiff's demand.]

**496. Garnishment bond (Kans. Gen. Stats. 1909 sec. 5823).**

[Title.]

WHEREAS A.... B...., the above named plaintiff, is about to apply for the issuance of a summons in garnishment in the above entitled action summoning E.... F.... as the garnishee of the defendant C.... D.... and has filed the necessary affidavit for that purpose;

NOW, THEREFORE, we G.... H.... and J.... K.... hereby undertake to the said C.... D.... in the penal sum of ..... dollars [*this sum not to exceed double the amount of the plaintiff's claim*] that the said A.... B.... shall pay to the said C.... D.... all damages which the said C.... D.... may sustain by reason of such garnishment if the order be wrongfully obtained.

Dated ....., 19..

G.... H....  
J.... K....

The above undertaking and the sureties thereto approved this .... day of ....., 19..

L.... M....  
Clerk ..... Court.

**497. Order of garnishment (Kans. Gen. Stats. 1909 sec. 5823).**

[Title.]

THE STATE OF KANSAS,

To E.... F....

WHEREAS, the above named A.... B.... the plaintiff herein has filed his affidavit alleging that he has good reasons to believe and does believe that you have in your possession or control, property of, or are indebted to C.... D.... the defendant above named.

NOW, THEREFORE, you are hereby ordered to appear before said court at the court house of said county in the city of ....., in said county, on the .... day of ....., 19.., at .... o'clock ..M., then and there to answer concerning such indebtedness or property.

[SEAL] WITNESS my hand and the seal of said court this .... day of ....., 19..

L.... M....  
District Clerk.

**498. Summons in garnishment (Kans. Gen. Stats. 1909, sec. 5824).**

[Title.]

THE STATE OF KANSAS,

To said garnishee:

YOU ARE HEREBY SUMMONED, pursuant to the affidavit filed herein, as garnishee of the defendant, C.... D...., and required, on or before the return day, to-wit, ....., 19.., to answer according to law whether you are indebted to such defendant, and file a copy of your answer with the clerk of this court; and in case of your failure so to do you will be liable to further proceedings according to law. Of which the said defendant will also take notice.

Witness my hand and the seal of said court at ..... in said county this .... day of ....., 19..

[SEAL]

L.... M....  
Clerk of District Court.  
..... County.

**499. Affidavit of non-liability (Kans. Gen. Stats. sec. 5826).**

[Title.]

[Venue.]

E.... F...., being duly sworn, says that on the ... day of ....., 19.., he was served with a garnishee summons in the above-entitled action; that he was then and is now in no manner and upon no account indebted or under liability to the defendant C.... D...., and that he then had and now has in his possession or under his control no real estate and no personal property, effects or credits, of any description, belonging to said defendant or in which he has any interest; and is in no manner liable as garnishee in this action.

E.... F....

[Jurat.]

*[The statutes of Kansas on the subject of garnishment are so similar to the statutes of Wisconsin that the forms already given for use in garnishment proceedings in Wisconsin may be readily used in Kansas with very slight changes.]*

**500. Affidavit, citation and order in garnishment (Mont. Rev. Codes 1907 sec. 6666-6668).**

*[The forms already given for use in California may be used without substantial change in Montana; see Forms 474, 475 and 476.]*

**501. Affidavit in garnishment (Minn. Gen. Stats. 1913 sec. 7859).**

[Title.]

[Venue.]

A.... B.... being first duly sworn on oath says that he is the plaintiff [*or the agent or the attorney for the plaintiff*] in the above entitled action; that said action is one for the recovery of money: to-wit, the sum of ..... dollars, with interest from ..... 19..; that he believes E.... F.... has property and money in his hands and under his control, belonging to the defendant above named in this action, exceeding twenty-five dollars in value, and that said E.... F.... is indebted to said defendant in an amount exceeding twenty-five dollars. [*If no indebtedness is claimed leave out the last clause.*]

A.... B....

[Jurat.]

*[The affidavit must not be in the alternative. Prince v. Heenan 5 Minn. 347.]*

**502. Summons to garnishee (Minn. Gen. Stats. 1913 sec. 7861).**

*[Title of garnishment action.]*

THE STATE OF MINNESOTA,

To E.... F...., the above named garnishee:

WHEREAS, in an action pending in the said court, wherein A.... B.... is plaintiff and C.... D.... is defendant, the said A.... B.... has made and filed with the clerk of this court his affidavit, stating that he believes that said E.... F.... the above named garnishee has property, money and effects in his hands and under his control belonging to the defendant C.... D.... exceeding twenty-five dollars in value, and that the said E.... F.... is indebted to said defendant C.... D.... in an amount exceeding the sum of twenty-five dollars.

NOW, THEREFORE, you the said E.... F.... are hereby summoned and required to appear before [*name of officer*] at ..... in the county of ..... and state aforesaid, on .... the .... day of ....., 19.., at .... o'clock in the .... noon of that day, and answer under oath such questions as may be put to you touching your indebtedness to the said defendant C.... D.... and any property, money or effects of the said defendant C.... D.... in your possession or under your control.

Dated ....., A. D. 19..

L.... M....

Plaintiff's Attorney.

*[To be served personally on the garnishee at least twenty days before the time fixed; fees for one day's attendance and mileage to be paid or tendered at the same time.]*

**503. Notice of garnishment to defendant (Minn. Gen. Stats. 1913 sec. 7861).**

[*Title.*]

To C.... D....,

the above named defendant.

TAKE NOTICE that the within garnishee summons was served by O.... P.... upon E.... F...., the above named garnishee, on the .... day of ....., 19.., at ....., in the county of ..... and state aforesaid, by delivering to and leaving with the said E.... F.... personally a true and correct copy of the same, and then and there tendering and paying to said garnishee his fees for one day's attendance and mileage, viz: \$.... And you are hereby required to appear and take part in the examination of said garnishee which is to take place at the time and place specified in the within garnishee summons.

Dated ....., 19..

L.... M....

Plaintiff's Attorney.

**504. Return of service of garnishee summons (Minnesota).**

[*Venue.*]

O.... P.... being duly sworn deposes and says that on the .... day of ....., 19.., at the city of ....., in said county, he served the within summons upon the within named garnishee by delivering to and leaving with him



personally a true and correct copy thereof, and that he then and there paid to the said garnishee in advance the sum of \$...., his fees for one day's attendance and mileage; that on the .... day of ....., 19.., at the city of ..... in said county he served upon the within named defendant a copy of the within summons, together with a notice to said defendant, of which the foregoing is a copy, by [*state manner of service*].

O.... P....

[*Jurat.*]

**505. Bond for release of property garnished (Minn. Gen. Stats. 1913 sec. 7886).**

[*Title.*]

KNOW ALL MEN by these presents that we, C.... D...., as principal, and G.... H.... and J.... K...., as sureties, are held and firmly bound unto A.... B...., the plaintiff in the above entitled action, in the sum of ..... dollars lawful money of the United States, for which payment to the said A.... B...., his heirs, executors, administrators or assigns, we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

THE CONDITION of this obligation is such, that whereas A.... B...., the above named plaintiff, has garnished the money, property and effects of the said C.... D...., the above named defendant in the hands of E.... F...., the above named garnishee;

Now, therefore, if the said C.... D...., the above named defendant, shall pay any judgment recovered against him in the original action to which this garnishee action is ancillary, or an amount thereon equal to the value of the money, property and effects so garnished, then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this .... day of ....., 19..

Signed, sealed and delivered in presence of:

W.... X....

Y.... Z....

C.... D.... [Seal]

G.... H.... [Seal]

J.... K.... [Seal]

[Venue.]

On this . . . . day of . . . . ., 19. . ., before me, a notary public within and for said county, personally appeared C. . . . D. . . ., G. . . . H. . . . and J. . . . K. . . ., to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed. L. . . . M. . . .

Notary Public, . . . . . County.  
My Commission Expires. . . . . 19. . .

[Venue.]

G. . . . H. . . . and J. . . . K. . . ., being duly sworn, each for himself on oath says that he is a resident of and freeholder in the state of Minnesota; and that he is worth the sum below specified opposite his name over and above his debts and other liabilities, and exclusive of his property exempt from execution, to wit: said G. . . . H. . . ., the sum of . . . . . dollars; said J. . . . K. . . ., the sum of . . . . . dollars.

G. . . . H. . . .

[Jurat.]

J. . . . K. . . .

I hereby approve the within bond and the sureties therein named.

Dated . . . . ., 19. . . O. . . . P. . . ., District Judge.  
[or, Court Commissioner].

*[The penalty of the bond must be double the amount claimed in the complaint, or double the value of the property garnished, and the justification and approval must be by the judge or commissioner of the county where the proceedings are pending.]*

### 506. Order discharging garnishment, to be endorsed upon the bond (Minn. Gen. Stats. 1913 sec. 7886).

Upon the filing of the foregoing bond, which has been and is hereby approved, and upon proof of service of a copy of this order on E. . . . F. . . ., garnishee herein, it is ordered that the garnishment of the money, property and effects of the defendant, C. . . . D. . . ., in the hands of said E. . . . F. . . ., which has heretofore been made in this action, be and the same is hereby discharged and the money, property and effects so garnished released therefrom

O. . . . P. . . . District Judge  
[or, Court Commissioner].

**507. Summons to garnishee attaching credits (Mo. R. S. 1909 sec. 2414, 2416).<sup>4</sup>**

[Title.] Attachment in civil action.

To E.... F...., Garnishee.

YOU ARE HEREBY NOTIFIED that I attach in your hands\* all debts due by you to C.... D...., the defendant in the above entitled cause, or so much thereof as will be sufficient to satisfy the sum of ..... dollars and ..... cents [*the amount sworn to by the plaintiff*] with interest and cost of suit,\*\* to be and appear before the circuit court of ..... county, to be holden at the court house in ..... in the said county of ..... on the .... Monday of ....., 19.., then and there to answer such allegations and interrogatories as may be exhibited by A.... B...., the plaintiff in the above entitled cause.

Witness my signature this .... day of ....., 19..

L.... M....,

Sheriff of ..... County.

**508. Summons to garnishee attaching goods or money (Mo. R. S. 1909 sec. 2414, 2416).**

[Proceed as in the last preceding form inserting, however, between \* and \*\* the following]: as the property and effects [or money] of C.... D...., the defendant in the above entitled cause one horse, one mule, one hundred dollars in money [or whatever else may be attached in the hands of the garnishee describing what is attached as near as may be].

**509. Interrogatories to garnishee in attachment (Mo. R. S. 1909 sec. 2425).**

[Title.]

This action having been duly commenced and a writ of attachment issued therein and E.... F.... having been summoned as garnishee of the defendant therein;

<sup>4</sup> In Missouri garnishees are summoned by the sheriff by declaring to the garnishees that he summons them to appear at the return term of the writ, to answer the interrogatories, also by reading the writ to them (if required) and by declaring to them that he attaches in their hands all goods and chattels in their hands and all debts due

from them to defendant, or sufficient thereof to discharge plaintiff's demand. Mo. R. S. 1909 sec. 2316-2414. This declaration should be in writing. The two forms here given are taken from the forms published in the Revised Statutes of Mo. 1909 Vol. 3 p. 3760, being forms 130 and 131.

Now comes the said plaintiff A.... B.... and exhibits the following interrogatories to be answered by the said E.... F...., viz:

1. At the time you were summoned as garnishee, had you, or have you since that time had, or have you now, in your possession, custody or charge, any lands, tenements, goods, chattels, moneys, credits or effects, belonging to the defendant C.... D....? If yea, state what they were, or are, and their value; if lands or tenements, a full description of them; and if goods, chattels, moneys, credits or effects, how they came into your possession, custody or charge.

2. At said time, were you, or have you since become, or are you now, in anywise indebted to the defendant C.... D....? If yea, state to what amount, in what manner the debt accrued, any instrument of writing by which it was evidenced, what has become of such instrument, and whether, to your knowledge, it was in the possession or under the control of the defendant C.... D.... or of his agent at the time, or after you were summoned as garnishee.

3. At said time, were you, or have you since become, or are you now, bound in any contract to pay the defendant C.... D.... money, which is not yet due? If yea, state the nature of such contract, the amount thereof, and when the money to be paid under it was, or is to become due and payable.

A.... B....,  
Plaintiff.

### 510. Affidavit of garnishment (Neb. R. S. 1913 sec. 7741).

[Title.]

[Venue.]

A.... B.... being first duly sworn says that he is the plaintiff [or, the agent, or, attorney of the plaintiff] in the above entitled action and makes this affidavit in his own [or, on said plaintiff's] behalf; that an order of attachment was duly issued in the above entitled action on the .... day of ....., 19.., directed and delivered to the sheriff of said ....., county; that affiant has good reason to believe that E.... F...., within said county of ....., has property of the said defendant, C.... D...., in his possession, to-wit [here fully describe the property], and also that the said E....

F.... is indebted to said C.... D.... in an amount unknown to affiant.

A.... B....

[*Jurat.*]

**511. The same, in aid of execution (Neb. R. S. 1913 sec. 7785).**

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn says that he is the plaintiff [*or, the agent, or, attorney of the plaintiff*] in the above entitled action and makes this affidavit on his own [*or, on the said plaintiff's*] behalf; that in the above entitled action the plaintiff recovered a judgment therein against the said defendant on the .... day of ....., 19..; that there is now due on said judgment the sum of ..... dollars; that an execution issued on said judgment has been returned unsatisfied for want of sufficient property belonging to the said defendant whereof to levy and collect the same. And affiant further says that he has good reason to and does believe that E.... F...., in said county, has property of said defendant in his possession, to-wit [*here describe the property*], and is indebted to the said judgment debtor in an amount unknown to affiant.

A.... B....

[*Jurat.*]

**512. Notice to garnishee in attachment (Neb. R. S. 1913 sec. 7741).**

[*Title.*]

To E.... F....,

YOU ARE HEREBY NOTIFIED that by virtue of an order of attachment heretofore issued in the above entitled action all goods, chattels, stocks, rights, credits, moneys, and effects of the above named defendant C.... D.... in your custody or control are attached.

And you are also notified that you are required to appear before the ..... court in and for said county, on the first day of the next term thereof, to-wit: On the .... day of ....., 19.., where said cause is pending, and answer such interrogatories as may there be propounded to you, and make true



disclosure concerning the property of every description and credits of the defendant in your possession or under your control, as well as the amount owing by you to the defendant.

WITNESS my hand this .... day of  
....., A. D. 19..

L.... M....,

Sheriff of ..... County, Neb.

[*Witness fees must be tendered to the garnishee to insure his appearance. Neb. R. S. 1913, sec. 7755.*]

**513. Summons in garnishment in aid of execution (Neb. R. S. 1913 sec. 7785).**

[*Title*]

[*Venue.*]

To the Sheriff of said County:

You are hereby commanded to summon E.... F.... to appear in the said district court of ..... County, Nebraska, on the .... day of ....., 19.., at .... o'clock, standard time, in the .... noon of said day, to answer under oath such interrogatories as shall be propounded to you touching the goods, chattels, rights, and credits of C.... D...., the above named defendant, in your possession or under your control.

You will make return of this writ on the .... day of ....., 19..

[SEAL]

WITNESS my hand and the seal of  
said court this .... day of .....,  
19..

G.... H...., Clerk

District Court, ..... County.

**514. Undertaking by garnishee to retain property or money (Neb. R. S. 1913 sec. 7758).**

[*Title.*]

[*Venue.*]

WHEREAS, upon the examination of E.... F...., the garnishee in the above entitled action, it appeared that the said E....F.... was at the time of his garnishment possessed of property of the defendant, C.... D...., to-wit [*here describe property*], and was indebted to said C.... D.... in the sum of ..... dollars;

NOW, THEREFORE, we, G.... H.... and J.... K...., residents of ..... County, Nebraska, do hereby undertake and bind ourselves to the plaintiff, A.... B...., as sureties in the sum of ..... dollars, that in case the court shall permit said garnishee to retain the said property and the said amount owing by said garnishee as aforesaid, the said amount shall be paid and the said property shall be forthcoming as the court may direct.

G.... H....  
J.... K....

[Date.]

The foregoing undertaking, and the sureties thereon, approved this .... day of ....., 19..

By the Court:  
L.... M...., Judge.

### 515. Affidavit of garnishment (N. Dak. Rev. Codes 1905 sec. 6969).<sup>5</sup>

[Title.]

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff [or, the agent, or, attorney of the plaintiff] in the above entitled action and makes this affidavit in his own [or, in said plaintiff's] behalf; that said action is brought to recover damages upon [*here state the nature of the plaintiff's cause of action*] and that affiant verily believes that E.... F.... is indebted to and has property, real or personal, in his possession or under his control belonging to the said defendant, C.... D...., and that said defendant has not property in this state liable to execution sufficient to satisfy the plaintiff's demand and that the indebtedness and property mentioned in this affidavit is, to the best of the knowledge and belief of affiant, not by law exempt from seizure or sale upon execution.

A.... B....

[Jurat.]

<sup>5</sup>The statutes governing garnishment proceedings in North Dakota are so nearly identical with the Wisconsin statutes on the subject that it is not deemed necessary

to insert any special forms here except the affidavit and summons. The forms given in this chapter for use in Wisconsin may be referred to.

**516. Summons in garnishment (N. Dak. Rev. Codes 1905 sec. 6970).**

[Title.]

## THE STATE OF NORTH DAKOTA

To the said Garnishee:

You are hereby summoned, pursuant to the annexed affidavit, as a garnishee of the defendant, C. . . . D. . . . , and required within thirty days after the service of this summons upon you, exclusive of the day of service, to answer according to law whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to such defendant, and to serve a copy of your answer on the undersigned at his office in . . . . . , in the county of . . . . . ; and in case of your failure so to do you will be liable to further proceedings according to law; of which the said defendant will also take notice.

L. . . . M. . . . , Plaintiff's Attorney,  
P. O. Address: . . . . . County, N. Dak.

**517. Notice to garnishee (S. Dak. C. C. P. 1903 sec. 216).**

*[In South Dakota garnishment in courts of record is accomplished simply by the sheriff leaving with the debtor a certified copy of the warrant of attachment with a notice showing the property levied on. The notice may be easily adapted from forms previously given in this chapter for use in other states. The statute authorizing this procedure is similar to that of Montana and California. See Forms 474, 475 and 476. Form 488, as used in Idaho is suggestive, except as to the interrogatories.]*

**518. Affidavit and summons in garnishment (Okla. Comp. laws 1909 sec. 5712, 5713).**

*[The garnishment statutes of Oklahoma, Kansas and Wisconsin are so nearly identical that the forms previously given in this chapter for use in Kansas and Wisconsin may with very slight changes be used in Oklahoma.]*

**519. Notice to garnishee (Oregon Laws 1910 sec. 300 sub. 3).**

*[Form 435 may here be used.]*

**520. Certificate of garnishee (Oregon Laws 1910 sec. 303).**

[*Title.*]

[*Venue.*]

To J.... K...., Sheriff of ..... County, Oregon:

I hereby certify, in answer to the writ of attachment and notice of garnishment served upon me in the above entitled action, on the date hereof, that I have in my possession the following described personal property belonging to the said defendant, to-wit: [*Here describe property.*]

Dated this .... day of ....., 19..

E.... F....

Garnishee.

**521. Affidavit in garnishment (Tex. Civ. Stats. Ann. 1913 art. 273).**

[*Title of garnishee suit.*]

To the Honorable, the ..... Court of ..... County.

Now comes A.... B...., the above named plaintiff and respectfully alleges that he is the plaintiff in a certain suit in said court numbered .... in which suit C.... D.... is defendant.

That in said last named suit an original attachment has been issued, as provided by law for the sum of ..... dollars, and the probable costs of suit.

[*Or, if no attachment has been sued out insert in place of the last sentence*]:

That plaintiff sues defendant in said last named suit for a debt amounting to the sum of ..... dollars. That said debt is just, due and unpaid, and defendant has not, within the knowledge of plaintiff, property in his possession within this state subject to execution sufficient to satisfy such debt; and that the garnishment now applied for is not sued out to injure either the defendant or the garnishee.

[*Or if the garnishment be instituted to collect a judgment insert in place of either of the two sentences*]:

That in said suit plaintiff recovered judgment against the said defendant, on the .... day of ....., 19.., for the sum of ..... dollars, with interest from date at the rate of .... per cent per annum and all costs of suit, which said judgment is still of force and unsatisfied, and that said defendant has

not within the knowledge of plaintiff, property in his possession within this state subject to execution sufficient to satisfy such judgment.

[*Then proceed as follows*]:

The plaintiff further alleges that he has reason to believe, and does believe, that N.... O...., who resides at ..... county of ....., state of Texas, *or* the X.... Y.... Company, a corporation whose local agent is Y.... Z...., and resides at ....., county of ....., in said state, is indebted to the defendant, and that he has in his hands effects belonging to the defendant. [*Or*, That plaintiff has reason to believe, and does believe, that the said X.... Y.... Company is an incorporated *or* joint stock company, and that the said defendant is the owner of shares in said company and has an interest therein.] Plaintiff therefore applies for a writ of garnishment against the said N.... O.... [*or* X.... Y.... Company].

[*Venue*.]

A.... B....

A.... B...., the plaintiff mentioned in the foregoing application, being duly sworn, upon his oath says that the facts therein stated are true.

[*Jurat*.]

A.... B....

## 522. Bond in garnishment (Tex. Civ. Stats. Ann. 1913 art. 272).

[*Title*.]

KNOW ALL MEN by these presents that we, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, do hereby acknowledge ourselves bound to pay to C.... D...., the above named defendant, the sum of ..... dollars, conditioned that the said A.... B...., the above named plaintiff, who has applied for a writ of garnishment in said suit against C.... D...., defendant will prosecute his suit to effect, and pay all damages and costs that may be adjudged against him for wrongfully suing out said garnishment.

WITNESS our hands this the .... day of  
....., A. D. 19..

A.... B....

E.... F....

G.... H....



Approved this . . . . day of . . . . ., 19..

L. . . . M. . . ., Clerk  
 . . . . . Court, . . . . . County.

*[To be given only in case there is neither attachment nor judgment.]*

**523. Writ of garnishment (Tex. Civ. Stats. Ann. 1913 art. 276).**

*[Title.]*

THE STATE OF TEXAS

to the sheriff or any constable of . . . . . County

Greeting:

WHEREAS, in the . . . . . court of . . . . . county in a certain cause numbered . . . . on the docket of said court wherein A. . . . B. . . . is plaintiff, and C. . . . D. . . . is defendant, the plaintiff, claiming an indebtedness against the said C. . . . D. . . . of . . . . . dollars, besides interest and costs of suit, has applied for a writ of garnishment against N. . . . O. . . . , who is alleged to be a resident of your county; [*or to be within your county*].

THEREFORE, you are hereby commanded, forthwith to summon the said N. . . . O. . . . if to be found within your county, to be and appear before the said court, at the next term thereof, to be held at, . . . . . in said county, on the . . . . day of . . . . ., 19.., then and there to answer upon oath, what, if anything, he is indebted to the said C. . . . D. . . . and was when this writ was served upon him, and what effects, if any, of the said C. . . . D. . . . , he has in his possession, and had when this writ was served, and what other persons, if any, within his knowledge, are indebted to the said C. . . . D. . . . , or have effects belonging to him in their possession.

*[If the garnishee be an incorporated or stock company in which the defendant is alleged to be interested or the owner of stock add]:*

And further to answer what number of shares, if any, the said C. . . . D. . . . owns in said [*name company*], and owned therein when this writ was served, and what interest, if any, said C. . . . D. . . . has in said [*name company*], and had therein when this writ was served. Herein Fail Not, but of this writ make due return, as the law **directs**.

WITNESS my hand and the seal of  
said court, this .... day of .....,  
19..

[SEAL]

L.... M...., Clerk,  
..... Court, ..... County, Texas.

[If the garnishee reside in another county from that in which the suit is pending and fails to make answer to the writ, a commission may be issued to certain officers in such county authorizing such officer to summon the recalcitrant garnishee before him to answer to the writ. Forms for this proceeding are given in the statutes. *Tex. Civ. Stats. Ann. 1913, arts. 284-287.*]

#### 524. Writ of garnishment on judgment (Texas).

[Title.]

THE STATE OF TEXAS

to the sheriff or any constable of ..... County

Greeting:

WHEREAS, on the .... day of ....., 19.., A.... B.... made affidavit before me, that on the ... day of ....., 19.., in the ..... court of ..... county, Texas, he recovered against C.... D.... a judgment for the sum of ..... dollars, damages and costs; that said judgment still remains due and unsatisfied; and that the defendant has not, within the knowledge of affiant, property in his possession, within this state, subject to execution, sufficient to satisfy said judgment, and that affiant has reason to believe, and does believe, that N.... O...., who resides in ..... county, Texas, is indebted to the said C.... D...., or has in his hands effects belonging to the said C.... D...., and has applied for writ of garnishment against the said N.... O....;

THEREFORE, you are hereby commanded, etc. [*Continue as in last preceding form.*]

#### 525. Replevy bond in garnishment (Tex. Civ. Stats. Ann. 1913 art. 279).

[Title of Garnishee action.]

[Follow Form 522 with the necessary changes resulting from the fact that the bond is given by the defendant instead of the plaintiff but substituting the following condition]: Conditioned

that the said defendant C.... D.... will pay to the plaintiff A.... B.... any judgment that may be rendered against the said N.... O.... as garnishee in the said garnishment suit.

WITNESS, etc. [*conclude as in Form 522.*]

**526. Notice to garnishee (Utah Comp. laws 1907 sec. 3073 sub. 6).**

[*Form 493 may here be used with slight changes.*]

[*The statutes of Utah are so nearly like the statutes of California on the subjects of attachment and garnishment that the forms heretofore given for use in California may be used with very slight changes.*]

**527. Affidavit in garnishment (Wash. Rem. and Bal. Code 1910 sec. 680).**

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn, on oath desposes and says: That he is the plaintiff [*or, the agent, or, attorney of the plaintiff*] in the above entitled action; that he makes this affidavit for the purpose of securing the issuance of a writ of garnishment directed to E.... F...., as garnishee; that the plaintiff [*if the affidavit is made by an agent or attorney insert here, and this affiant*] has reason to believe, and does believe, that E.... F...., residing at ....., in ..... county, state of Washington, is indebted to C.... D...., the defendant above named, or that he has in his possession or under his control property or effects belonging to said defendant; that \* the plaintiff above named sues herein for a debt, and that the same is just, due and unpaid, and the garnishment hereby applied for is not sued out to injure either the defendant or said garnishee \*\*. [*If the garnishment is in aid of attachment insert between \* and \*\* the words, that an original writ of attachment was issued in the above entitled action on the .... day of ....., 19.., and that the same is now in the hands of the sheriff of ..... county aforesaid for execution and return: or if the garnishment is sought to collect the amount due on a judgment allege the entry of the judgment and the amount due thereon.*]

[*Jurat.*]

A.... B....

**528. Bond in garnishment (Wash. Rem. and Bal. Code 1910 sec. 681).**

[Title.]

[Venue.]

KNOW ALL MEN by these presents, that we, A.... B...., the above named plaintiff, as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto C.... D...., the defendant above named, in the full sum of ..... dollars, lawful money of the United States, to be paid to the said defendant, his executors, administrators and assigns, for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this .... day of ....., 19..

THE CONDITION of this obligation is such that, where-as the said plaintiff has brought action in the superior court of ..... county, and has caused a writ of garnishment to be issued therein.

Now, therefore, if the said plaintiff shall and will well, truly and duly prosecute the said suit and shall and will pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment in the event the court shall adjudge the same to have been wrongfully issued then this obligation shall be null and void, otherwise of force.

In presence of	}	A....	B....	[Seal]
.....		E....	F....	[Seal]
.....		G....	H....	[Seal]

[Add qualification of sureties as in Form 454.]

**529. Writ of garnishment (Wash. Rem. and Bal. Code 1910 sec. 685).**

[Title.]

THE STATE OF WASHINGTON

to E.... F....

Greeting:

WHEREAS, in the superior court of the state of Washington, in and for ..... county, in a certain cause wherein A.... B.... is plaintiff, and C.... D.... is defendant, the plaintiff claiming an indebtedness against the said C.... D.... of ..... dollars, besides interest from ....., 19..





**532. Affidavit and notice in garnishment (Wyo. Comp. Stats. 1910 sec. 4856).**

*[The statutes of Wyoming regulating garnishment are so nearly like the statutes of Nebraska that the form previously given in this chapter for garnishment proceedings in the latter state may be readily adapted to use in Wyoming.]*

## CHAPTER XII.

### REPLEVIN.

#### WISCONSIN

- 533. Affidavit in replevin.
- 534. The same, possession obtained by fraud.
- 535. The same, to recover exempt property.
- 536. Affidavit by one having special property as bailee for hire.
- 537. Affidavit by pledgee.
- 538. Affidavit by lessee.
- 539. Requisition to be endorsed on affidavit.
- 540. Plaintiff's undertaking in replevin.
- 541. Exception by defendant to sufficiency of sureties.
- 542. Notice of justification of plaintiff's sureties.
- 543. Undertaking by defendant in replevin.
- 544. Notice of justification of defendant's sureties.
- 545. Justification of sureties before officer, pursuant to notice.
- 546. Notice of motion to set aside proceedings for irregularity.
- 547. Affidavit of third person claiming property.
- 548. Sheriff's demand for indemnity.
- 549. Undertaking to indemnify sheriff against claim of third person.
- 550. Petition for intervention by third person.
- 551. Order to show cause in intervention proceedings.
- 552. Order allowing intervention and amendment.

- 553. Verdict for plaintiff in replevin.
- 554. Verdict for plaintiff in replevin where his interest is special.
- 555. Verdict for defendant in replevin where property has been delivered to plaintiff.
- 556. Alternative judgment for plaintiff in replevin.
- 557. Judgment for plaintiff in replevin for value, property delivered to defendant.

#### CALIFORNIA

- 558. Affidavit in claim and delivery.
- 559. Requisition to be endorsed on affidavit.
- 560. Plaintiff's undertaking in claim and delivery.
- 561. Sheriff's return in replevin.

#### ARIZONA

- 562. Affidavit in replevin.
- 563. Order requiring sheriff to seize the property in replevin.
- 564. Plaintiff's bond in replevin.
- 565. Defendant's redelivery bond.

#### ARKANSAS

- 566. Affidavit in replevin and subsequent papers.

#### COLORADO

- 567. Affidavit in replevin.
- 568. Plaintiff's bond in replevin.
- 569. Writ of replevin.
- 570. Defendant's redelivery bond in replevin.

## IDAHO

571. Affidavit, undertaking and following papers in claim and delivery.

## IOWA

572. Petition in replevin by unqualified owner.  
 573. The same, to recover property seized on execution.  
 574. Petition in replevin by qualified owner.  
 575. Plaintiff's replevin bond.  
 576. Writ of replevin.  
 577. Affidavit of concealment of property.  
 578. Defendant's delivery bond in replevin.  
 579. Notice to defendant to choose appraiser.  
 580. Appraisement.  
 581. Execution in replevin.

## KANSAS

582. Affidavit, undertaking and order of delivery in replevin.  
 583. Defendant's redelivery bond in replevin.

## MINNESOTA

584. Affidavit in replevin by general owner.  
 585. Affidavit in replevin by one having special interest only.  
 586. Plaintiff's bond in replevin.  
 587. Exception to sufficiency of sureties.  
 588. Defendant's bond in replevin.  
 589. Sheriff's return in replevin, to be endorsed on affidavit.  
 590. Affidavit of third person claiming title to property replevied.  
 591. Indemnifying bond by plaintiff to sheriff in replevin.  
 592. Verdict in replevin.

## MISSOURI

593. Affidavit in replevin.  
 594. Order for delivery in replevin.

595. Plaintiff's bond in replevin.  
 596. Defendant's redelivery bond in replevin.

## MONTANA

597. Affidavit, undertaking and requisition in claim and delivery.

## NEBRASKA

598. Affidavit in replevin.  
 599. The same, where exempt property has been seized on execution.  
 600. Order of replevin.  
 601. Bond in replevin.  
 602. Oath and appraisal in replevin.

## NORTH DAKOTA

603. Affidavit, requisition and undertaking in claim and delivery.

## SOUTH DAKOTA

604. Affidavit, requisition and undertaking in claim and delivery.

## OKLAHOMA

605. Affidavit in replevin.  
 606. Undertaking in replevin.  
 607. Order of delivery.  
 608. Sheriff's return to order of delivery.  
 609. Defendant's redelivery bond.

## OREGON

610. Affidavit, requisition and undertaking in claim and delivery.

## TEXAS

611. Affidavit for sequestration.  
 612. Sequestration bond.  
 613. Writ of sequestration.  
 614. Defendant's replevy bond in sequestration.

615. Plaintiff's replevy bond in sequestration.

UTAH

616. Affidavit, requisition and undertaking in claim and delivery.

WASHINGTON

617. Affidavit in claim and delivery.

618. Plaintiff's bond in claim and delivery.

WYOMING

619. Affidavit in replevin.

620. Order of replevin.

621. Plaintiff's undertaking in replevin.

622. Defendant's undertaking in replevin.

623. Oath and appraisal.

In most of the code states the common law action of replevin no longer exists under that name; an action to recover the possession of personal property wrongfully detained may, however, be brought in the same manner as any other civil action, an immediate delivery of the property obtained, if plaintiff chooses, by filing a proper affidavit and bond or undertaking.

In the first codes this provisional remedy was called "Claim and delivery" and it is still so designated in a number of states. In common parlance, however, the name replevin has always remained in use and in a number of states it is so denominated by statute. In some states a writ is issued, in some an order and in some the plaintiff simply signs a requisition on the back of the affidavit. In Texas the remedy is obtained by means of a writ of sequestration. In Iowa a writ is issued upon the petition in the action.<sup>1</sup>

<sup>1</sup> *Wisconsin*. (Wis. Stats. 1913 sec. 2717, 2718.) The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons or at any time before answer, claim the immediate delivery of such property on filing an affidavit made by the plaintiff or some one on his behalf, showing: (1) That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth; (2) That the property is wrongfully detained by the defendant; (3) The alleged cause of the detention thereof according

to his best knowledge, information and belief; (4) That the same has not been taken for a tax, assessment or fine, pursuant to the statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized that it is by statute exempt from such seizure; and, (5) The actual value of the property.

*Arizona*. (Ariz. R. S. 1913 sec. 1604.) If the plaintiff claim in his complaint the possession of specific personal property, he may at the time of filing his complaint or at any other time afterwards, before the rendition of judgment in the cause, file his affidavit, or the affidavit of some other person in his

behalf, showing: (1) That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof; (2) That it is wrongfully detained by the defendant; (3) The actual value thereof; (1) That the same has not been seized under any process, execution, or attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure.

*Arkansas.* (Ark. Dig. of Stats. 1904 sec. 6853.) The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the action, or at any time before judgment, claim the immediate delivery of the property, on an order for the delivery of property to the plaintiff made by the clerk when there is filed in his office an affidavit of the plaintiff, or of some one in his behalf, showing *First:* A particular description of the property claimed. *Second:* Its actual value, and the damages which the affiant believes the plaintiff ought to recover for the detention thereof. *Third:* That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property. *Fourth:* That the property is wrongfully detained by the defendant, with the alleged cause of the detention thereof, according to the best knowledge, information and belief of the affiant. *Fifth:* That it has not been taxed for a tax or fine against the plaintiff, or under any order or judgment of a court against him, or seized under an execution or attachment against his property, or, if so seized, that it is by statute exempt from such seizure. *Sixth:* That the plaintiff's cause of action has accrued within three years; and where the action is brought to recover property taken under an execution, the affidavit must state the fact of the taking, and the nature of the process under which it was done.

*California* (Cal. C. C. P. 1906 sec. 509, 510). Substantially the same as Wisconsin.

*Colorado.* (Colo. Code Ann. 1911 sec. 85, 86). Substantially the same as Wisconsin, except subdivision 3.

*Idaho.* (Idaho Rev. Codes, 1908 sec. 4271, 4272). Substantially the same as Wisconsin.

*Iowa.* (Iowa Ann. Code, 1897 sec. 4163.) An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state: (1) A particular description of the property claimed; (2) Its actual value, and, where there are several articles, the actual value of each; (3) The facts constituting the plaintiff's right to the present possession thereof, and the extent of his interest in the property, whether it be full or qualified ownership; (4) That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property; but if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process. (5) The facts constituting the alleged cause of detention thereof, according to his best belief; (6) The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

*Kansas.* (Kans. Gen. Stats. 1909 sec. 5769, 5770). The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the suit or at any time before answer-day claim the immediate delivery of such property. An order for the delivery shall be made by the clerk when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing: *First:* A description of the property claimed; *Second:* That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the



immediate possession of the property; *Third*: That the property is wrongfully detained by the defendant; *Fourth*: That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this article, or any other mesne or final process issued against said plaintiff; *Fifth*: If taken in execution, or on any order or judgment against the plaintiff that it is exempt by law from being so taken; *Sixth*: The actual value of the property. When several articles are claimed the value of each shall be stated as nearly as practicable.

*Minnesota.* (Minn. Gen. Stats. 1913 sec. 7834, 7835). Substantially the same as Wisconsin, except subdivision 3.

*Missouri.* (Mo. R. S. 1909 sec. 2637.) Substantially the same as Arizona, except add, as subdivision 5, "that plaintiff will be in danger of losing his said property, unless it be taken out of the possession of the defendant, or otherwise secured."

*Montana.* (Mont. Rev. Codes, 1907 sec. 6622, 6623). Substantially the same as Wisconsin, except subdivision 3.

*Nebraska.* (Neb. Rev. Codes, 1913 sec. 7822, 7823). Substantially the same as Kansas, except omit subdivisions 5 and 6, and add: "Provided, such affidavit may omit the first and last clause of this subdivision and in lieu thereof show that the property was taken on execution on a judgment or order, other than an order of delivery in replevin, and that the same is exempt from such execution or attachment under the laws of this state; and provided, further, the provisions of this article shall extend to and apply as well to proceedings in replevin had before justices of the peace."

*North Dakota.* (N. Dak. Rev. Codes, 1905 sec. 6917, 6918). Same as Wisconsin.

*South Dakota.* (S. Dak. C. C. P. 1903 sec. 184, 185.) Same as Wisconsin.

*Oklahoma.* (Okla. Comp. Laws, 1909 sec. 5687, 5688). Same as Kansas.

*Oregon.* (Oregon Laws, 1910 sec. 283, 284). Substantially the same as Wisconsin.

*Texas.* (Tex. Civ. Stats. Ann. 1913 art. 7094). Judges and clerks of the district and county courts, and justices of the peace, shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits of revenue produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant, or person in possession thereof will make use of his possession to injure such property, or waste or

**533. Affidavit in replevin (Wis. Stats. 1913 sec. 2718).**

[Title.]

[Venue.]

A.... B.... being first duly sworn says that he is the plaintiff [or the agent or attorney of the plaintiff] in the above entitled action and makes his affidavit on this own [or, in said plaintiff's] behalf.\*

That said plaintiff is the owner and lawfully entitled to the immediate possession of that certain personal property, to

convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to any such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant, or either of them in the event there be more than one defendant, is a nonresident of this state. (Art. 7095).

But no sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing, stating: (1) That he is the owner of the property sued for, or some interest therein, specifying such interest, and is entitled to the possession thereof; or, (2) If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date

when due; (3) The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated; (4) It shall set forth one or more of the causes named in the preceding article entitling him to the writ.

*Utah.* (Utah Comp. Laws 1907 sec. 3045, 3046). Substantially the same as Wisconsin.

*Washington.* (Wash. Rem. and Bal. Code 1910 sec. 707 and 708). Same as Wisconsin except omit subdivision 3.

*Wyoming.* (Wyo. Comp. Stats. 1910 sec. 5005, 5006). The possession of specific personal property may be recovered in an action. An order for the delivery shall be issued by the clerk when there is filed an affidavit of the plaintiff, his agent or attorney, showing: (1). A description of the property claimed; (2). That the plaintiff is the owner of the property, or has special interest therein, and if the ownership or interest is special or partial, the fact shall be stated; (3). That the property is wrongfully detained by the defendant; (4) That it was not taken upon any process issued against the plaintiff, or if taken under such process that the property was exempt from execution expressly or upon demand or selection by the plaintiff, and is not held for a tax, or if held for a tax, that it is not held for any tax legally assessed or levied against the plaintiff.

recover possession of which this action is brought, and which is described as follows, that is to say:\*\* [*describe property*].

That the said property is wrongfully detained from said plaintiff by said defendant at . . . . ., in the county of . . . . . and state aforesaid; that the alleged cause of such detention, according to the best of deponent's knowledge, information and belief, is that the said C. . . . D. . . . claims the right to retain possession thereof as security for the payment of a certain sum of money alleged to have been loaned to one E. . . . F. . . . by C. . . . D. . . ., upon a pledge of said property with said C. . . . D. . . . by said E. . . . F. . . . [although in fact said E. . . . F. . . . was not the owner of said property, and had no right to pledge the same].

That the said property, or any part thereof, has not been taken for a tax, assessment or fine, pursuant to the statute, or seized under an execution or attachment against the property of said plaintiff, and that the actual value of said property is . . . . . dollars.

A. . . . B. . . .

[*Jurat.*]

#### 534. The same, possession obtained by fraud.

[*Proceed as in Form 533, but insert as cause of detention the following*]:

That the said defendant claims to have purchased the same from said plaintiff; but said pretended purchase was procured by fraud on the part of said defendant in representing himself to be solvent and worth . . . . dollars, when in fact he was insolvent, and wholly unable to pay his debts, and well knew the fact so to be, and made such representations to the said plaintiff with intent to deceive and defraud him; and relying thereon the said plaintiff parted with possession of said goods.

#### 535. The same, to recover exempt property.

[*Proceed as in Form 533, but insert in place of the allegation that the property has not been taken for a tax, etc., the following*]:

That the said property has not been taken for a tax, assessment, or fine, pursuant to the statutes, or seized under an execution or attachment against the property of the plaintiff, except as hereinafter stated.

That the said C.... D.... claims to be sheriff of ..... county, and as such sheriff to have levied upon said property under an execution alleged to have been issued against the plaintiff, which is the alleged cause of the detention of said property, according to the best knowledge, information, and belief of deponent.

That plaintiff is by occupation a carpenter; and that said property above mentioned constituted the working-tools and implements of plaintiff, used and kept for the purpose of carrying on his said business; wherefore said property is exempt by statute from seizure under execution, as deponent is advised by his counsel and verily believes. [*Or state fully other facts showing that the property is exempt under the statute from seizure.*]

**536. Affidavit by one having special property as bailee for hire.**

[*Proceed as in Form 533, and insert between the \* and \*\* as follows*]:

That the plaintiff is lawfully entitled to the immediate possession of the goods hereinafter described, by virtue of a special property therein arising out of the following facts, to-wit: that said goods were deposited with plaintiff for storage by their general owner, E.... F...., for .... months, on an agreement by E.... F.... to pay the plaintiff storage therefor, which storage is worth ..... dollars; and they have been taken from the plaintiff without his consent, and without payment of said storage. And that the plaintiff claims possession, as aforesaid, of the following described property.

**537. Affidavit by pledgee.**

[*Between the \* and the \*\* in Form 533 insert*]:

That the goods hereinafter mentioned were delivered to the said plaintiff by the said defendant, as a security for the payment of ..... dollars; and that the said defendant, unknown to the said plaintiff, took away said property from the possession of the plaintiff, against his will, and now refuses to return the same, while the said sum of money is still due and unpaid, and the said goods and chattels are his only security therefor; and that said plaintiff is lawfully



entitled to immediate possession thereof by virtue of his special property therein, as above set forth, and that said goods and property are described as follows, to-wit:

**538. Affidavit by lessee.**

*[Between the \* and the \*\* in Form 533 insert]:*

That the said plaintiff hired the goods hereinafter mentioned of the said defendant for the term of . . . . months, and paid him therefor the sum of . . . . . dollars; and that said time has not yet expired, and the said defendant unlawfully got possession of said goods, and now wrongfully detains them from the possession of said plaintiff; that plaintiff is lawfully entitled to immediate possession of said goods by virtue of his special property therein as lessee as above set forth, and that said goods are described as follows, to-wit:

**539. Requisition to be endorsed on affidavit.**

To the Sheriff of the County of . . . . ., State of . . . . .:

You are hereby required to take the personal property described in the within affidavit from the defendant and deliver the same to the plaintiff in this action.

Dated . . . . ., 19..

A.... B....  
Plaintiff.

**540. Plaintiff's undertaking in replevin (Wis. Stats. 1913 sec. 2720).**

*[Title.]*

WHEREAS the plaintiff in the above entitled action, which is brought for the recovery of the possession of certain personal property, claims the immediate delivery of such property, and to that end has made or caused to be made an affidavit therein as prescribed by statute, and has by endorsement thereon, in writing, required the sheriff of . . . . . county, in said state, to take the property therein described from said defendant, and deliver the same to the said plaintiff;

NOW, THEREFORE, we, G.... H...., merchant, and J.... K...., farmer, both of . . . . . in said county, do undertake, and acknowledge that we are jointly and severally bound in the sum of . . . . . dollars being double the value of said property as stated in said affidavit, that said



plaintiff shall prosecute said action with effect and return said property to said defendant if a return is adjudged, and shall pay to him such sum as may for any cause be recovered against said plaintiff in said action.

Dated this .... day of ....., 19..

G.... H.... [Seal]

Signed, sealed and delivered J.... K.... [Seal]

in presence of:

L.... M....

N.... O....

[*Venue.*]

On this .... day of ....., 19.., before the undersigned, a notary public in and for said county and state, personally appeared G.... H.... and J.... K...., known to me to be the persons who are described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

P.... Q....

Notary Public.

[*Venue.*]

G.... H.... and J.... K.... being duly sworn, each for himself, says that he has signed the within undertaking and that his occupation is therein truly stated; that he is a resident and freeholder within this state, and is worth the sum of two hundred dollars over and above his debts and liabilities in property within this state, exclusive of his property exempt from execution.

G.... H....

J.... K....

[*Jurat.*]

I approve the within undertaking, and the sureties thereto.

Dated ....., 19..

R.... S....

Sheriff of ..... County.

**541. Exception by defendant to sufficiency of sureties  
(Wis. Stats. 1913 sec. 2721).**

[*Title.*]

To R.... S...., Sheriff of ..... County:

Please take notice that the above named defendant accepts to the sufficiency of the sureties upon the undertaking

of the plaintiff given in this action to obtain a delivery of the property described in the plaintiff's affidavit herein.

Dated . . . . ., 19..

C. . . . D. . . ., Defendant.

By L. . . . M. . . ., Attorney.

*[If defendant except to the sureties they are required to justify in like manner as bail upon arrest. In case of exception to the sureties the defendant cannot give an undertaking to reclaim the property.]*

**542. Notice of justification of plaintiff's sureties (Wis. Stats. 1913 sec. 2721).**

[Title.]

To C. . . . D. . . . the above named defendant and to L. . . . M. . . ., Esq., his attorney:

TAKE NOTICE that G. . . . H. . . . and J. . . . K. . . . the sureties upon the undertaking given by the plaintiff in this action of date . . . . . 19.. whose sufficiency as sureties has been excepted to by you will justify before the Hon. L. . . . M. . . ., judge of the . . . . . court of . . . . . county at his chambers in the court house in the city of . . . . . in said county on the . . . . day of . . . . ., 19.. at . . . . o'clock in the . . . . noon.

Dated . . . . ., 19..

N. . . . O. . . .

Plaintiff's Attorney.

**543. Undertaking by defendant in replevin (Wis. Stats. 1913 sec. 2722).**

[Title.]

WHEREAS the plaintiff aforesaid has commenced an action in this court to recover the possession of the following described property [*insert description*] and claimed the immediate delivery thereof to him, which property is of the alleged value of . . . . . dollars; the same having been taken from the possession of the defendant by the sheriff of . . . . . county, state of . . . . ., but not yet delivered to the said plaintiff;

And whereas the defendant requires the return of said property;

NOW, THEREFORE, we, the subscribers hereto, G. . . . H. . . ., merchant, and J. . . . K. . . ., farmer, both of . . . . .,

in said county, do hereby undertake and become bound to the plaintiff in the sum of four hundred dollars for the delivery of the said property to the plaintiff, if such delivery shall be adjudged, and for the payment to the plaintiff of such sum as may, for any cause, be recovered against the defendant in this action.

Dated this . . . . day of . . . . ., 19..      G.... H....

Signed, sealed and delivered      J.... K....

in presence of:

L.... M....

N.... O....

[*Acknowledgment, justification and approval as in Form 540.*]

**544. Notice of justification of defendant's sureties  
(Wis. Stats. 1913 sec. 2723).**

[*Title.*]

To the within named A.... B...., Plaintiff.

SIR: You will please take notice that the sureties within named will justify as such before Hon. E.... F...., circuit judge, [*or other officer, giving official title*] on the . . . . day of . . . . ., 19.., at . . . . o'clock in the . . . . noon at his chambers in the court house in the city of . . . . . in said county.

Dated . . . . ., 19..

L.... M....

Defendant's Attorney.

[*To be served not less than two nor more than six days before justification.*]

**545. Justification of sureties before officer, pursuant to  
notice (Wis. Stats. 1913 sec. 2723).**

[*Title.*]

On this . . . . day of . . . . ., 19.., at . . . . . pursuant to due notice, personally attended before me, the undersigned, circuit judge of said court [*or insert official title*], G.... H.... and J.... K...., the sureties of C.... D...., the defendant in this action, upon his undertaking to obtain a return of the property, the subject of the action, to justify as such sureties, and the said G.... H.... being first duly sworn for himself says, in answer to interrogatories put to him: [*here state his answers as to his responsibility as surety.*]

And the said J.... K.... being first duly sworn, for himself says, on like interrogatories, that: [*here his statement.*]

G.... H....

[*Jurat.*]

J.... K....

[*To be annexed to the the undertaking.*]

*Allowance, to be endorsed on undertaking.*

[*Venue.*]

This day attended before me the within named G.... H.... and J.... K...., sureties upon the within undertaking, and justified before me; and I find said bail sufficient, and allow the same.

Dated ....., 19..

E.... F....

[*Official title.*]

#### 546. Notice of motion to set aside proceedings for irregularity.

[*Title.*]

TAKE NOTICE that on [the annexed affidavit of the defendant, C.... D...., and on the complaint and all the proceedings in this action] the undersigned will move the court, at ....., on the .... day of ....., 19.., at .... o'clock in the .... noon, or as soon thereafter as counsel can be heard, that the affidavit made by the plaintiff in this action, and the requisition to the sheriff of the county of ....., indorsed thereon, and all proceedings taken by the plaintiff or by the said sheriff, respectively, by virtue thereof, may be set aside as void and irregular for the reason that [*specify irregularity complained of*] and that the property taken by the said sheriff under said affidavit and requisition may be restored by him to the said defendant; and for such other or further relief as may be just [and for the costs of this motion].

Dated ....., 19..

E.... F....

Attorney for Defendant C.... D....

To L.... M...., Esq.,

Plaintiff's Attorney.

#### 547. Affidavit of third person claiming property (Wis. Stats. 1913 sec. 2727).

[*Title.*]

[*Venue.*]

E.... H.... being duly sworn says that he is the owner

of certain personal property, to-wit, [*describe property*] and that he is entitled to the immediate possession thereof and hereby claims the same; that said property is now in the possession of R.... S...., sheriff of ..... county, having been lately taken by him upon the requirement of A.... B.... in an action of replevin now pending in said court, at the suit of A.... B.... against C.... D...., defendant; that the grounds of the affiant's title to the said property, and his right thereto, are that he is the sole and absolute owner thereof, and that the same is subject to no liens or special property of any kind therein.

E.... F....

[*Jurat.*]

[*To be served upon the sheriff.*]

#### 548. Sheriff's demand for indemnity (Wisconsin).

[*Title.*]

TAKE NOTICE that E.... F.... claims the property taken by me in this action, and that unless I am indemnified by the plaintiff against such claim I shall not keep the property nor deliver it to the plaintiff.

[*Date.*]

R.... S....  
Sheriff ..... County.

To L.... M....,  
Plaintiff's Attorney.

#### 549. Undertaking to indemnify sheriff against claim of third person (Wis. Stats. 1913 sec. 2727).

[*Title.*]

WHEREAS, pursuant to the requirement of the plaintiff herein, and upon undertaking duly executed in that behalf, certain personal property claimed by the plaintiff, to-wit **t** [*here describe the property*] and of the value, as he states, of two hundred dollars, was taken by the sheriff of ..... county; and

Whereas one E.... F.... claims the said property and has made and delivered to the sheriff an affidavit of his alleged right thereto and right to possession thereof;

NOW, THEREFORE, in consideration that the said sheriff of ..... county do deliver the said property above described to the said plaintiff, as required by him, we,



G.... H...., merchants and J.... K...., farmer, of ....., in said county, do hereby undertake, agree and acknowledge ourselves jointly and severally bound unto R.... S...., the said sheriff of ..... county, in the sum of four hundred dollars, to indemnify and save harmless the said sheriff against said claim of E.... F.... and from all costs, damages, expenses or loss by reason of the same, or his action in delivering the said property to the plaintiff.

Dated at ....., 19..

G.... H....  
J.... K....

[*Venue.*]

G.... H.... and J.... K.... being each first duly sworn each for himself says that he has signed the foregoing undertaking; that his occupation is therein truly stated; that he resides in and is a freeholder [*or*, householder] of said county, and that he is worth the sum of four hundred dollars in property within this state, exclusive of property exempt from execution.

G.... H....  
J.... K....

[*Jurat.*]

**550. Petition for intervention by third person (Wis. Stats. 1913 sec. 2610).**

[*Title.*]

To the Honorable, the ..... Court for ..... County.

THE PETITION of E.... F...., of ....., in said county, respectfully represents:

That the above entitled action is now pending in this court for the recovery by said plaintiff from the defendant of the following described personal property, to-wit [*describe same*], which said action has not yet proceeded to trial or judgment.

That your petitioner is the sole and absolute owner of said property and entitled to immediate possession thereof, and that neither of the parties to this action have any title or interest in said property, or any rightful claim to the possession thereof.

WHEREFORE defendant prays that he be made a party defendant in this action, and that the proper amendment be

made for that purpose, and for such further order as may be just.

E.... F....  
Petitioner.

[*Jurat.*]

[*To be served on both plaintiff and defendant with following order to show cause.*]

**551. Order to show cause in intervention proceedings (Wisconsin).**

[*Title.*]

On reading and filing the petition of E.... F.... attached hereto, and the papers on file in this action, and on motion of L.... M...., attorney for said petitioner, it is

ORDERED that the plaintiff and defendant in this action show cause before the court at ..... on the .... day of ....., 19.., or as soon thereafter as counsel can be heard, why an order should not be made letting the said E.... F...., petitioner, intervene in this action as a claimant for said property described in the complaint herein, and that the proper amendments be made to allow such intervention and setting up of such claim, granting petitioner such other order or relief as may be just;

It is further ordered that a copy of the said petition and this order be served on the plaintiff and defendant herein, on or before the .... day of ....., 19.., and that until the hearing of said petition all proceedings herein be stayed.

By the Court:

I.... K...., Circuit Judge.

**552. Order allowing intervention and amendment (Wisconsin).**

[*Title.*]

The petition of E.... F...., coming on to be heard this .... day of ....., 19.., upon the order to show cause, the said petition and the pleadings and papers on file in this action, and after hearing L.... M...., Esq., attorney for the petitioner, and N.... O...., Esq., of counsel for the plaintiff [and P.... Q...., Esq., of counsel for the defendant] and the court being advised in the premises; on motion of Y.... Z...., Esq., attorney for the petitioner,

IT IS ORDERED that the said E.... F...., petitioner, be let in as an additional defendant in this action;

That the summons and complaint herein be amended to make him such defendant, with proper allegations for that purpose as the plaintiff may be advised, and that the said intervening defendant have twenty days after service upon him of the amended summons in which to plead thereto as he may be advised.

Dated ....., 19..

By the Court:  
R.... S...., Judge.

**553. Verdict for plaintiff in replevin (Wis. Stats. 1913 sec. 2859).**

[*Title.*]

WE, THE JURY in this action, find for the plaintiff that he is the owner of and entitled to the immediate possession of the property described in the complaint, and we assess the value of said property at ..... dollars, and the plaintiff's damages by reason of the detention and withholding of the property at the sum of ..... dollars.

Dated ....., 19..

J.... K....  
Foreman.

**554. Verdict for plaintiff in replevin where his interest is special (Wis. Stats. 1913 sec. 2859).**

[*Title.*]

WE, THE JURY in this action, find for the plaintiff, that he is the owner of a special interest or property in the property described in the complaint; that the value of said entire property is ..... dollars, and the value of plaintiff's special interest therein is ..... dollars, and that the plaintiff is entitled to immediate possession of said property by virtue of his special interest therein, and that subject to such special interest the defendant is the general owner of said property; and we assess the plaintiff's damages by reason of the taking and withholding of said property at the sum of ..... dollars.

Dated ....., 19..

J.... K....  
Foreman.

**555. Verdict for defendant in replevin where property has been delivered to plaintiff (Wis. Stats. 1913 sec. 2859).**

[Title.]

WE, THE JURY in this action, find in favor of the defendant, that he is entitled to a return of the property described in the complaint, and assess the value thereof at the sum of ..... dollars, and the defendant's damages by reason of the taking, withholding and detention of the same at the sum of ..... dollars.

Dated ....., 19..

J.... K....  
Foreman.

**556. Alternative judgment for plaintiff in replevin (Wis. Stats. 1913 sec. 2885).**

[Title.]

THIS ACTION HAVING BEEN TRIED before the court and a jury, and the jury having rendered their verdict, wherein they find for the plaintiff that he is the owner of, and entitled to the possession of the property described in the complaint, and assess the value thereof at the sum of ..... dollars, and the plaintiff's damages for the detention thereof by the defendant at the sum of ..... dollars;

And it appearing from the return of the sheriff herein and from the undertaking filed herein on the part of the defendant that the said property was delivered to the defendant, pursuant to the statute, and that G.... H.... and J.... K.... are his sureties, who signed said undertaking in the sum of ..... dollars, pursuant to said statute, to the effect that they were bound, as therein required, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment of such sum to the plaintiff as might for any cause be recovered against the defendant; \*

And the plaintiff having in open court elected to take judgment for the recovery of possession of the property described in the complaint, or the value thereof in case a delivery can not be had;

Now, on motion of L.... M...., attorney for the plaintiff,

IT IS ADJUDGED that A.... B...., the plaintiff, do have and recover of C.... D...., defendant, and G....

H.... and J.... K...., his sureties, the possession of the property described in the complaint, as follows [*here describe the property*], together with ..... dollars, his damages assessed as aforesaid, for such detention; and in case a delivery can not be had of said property, then that said plaintiff do have and recover of said defendant and his said sureties the sum of ..... dollars, the value of said property, in addition to his damages, together with the sum of ..... dollars, the costs of this action as taxed.

Dated and entered this .... day of ....., 19..

By the Court:

N.... O...., Clerk.

**557. Judgment for plaintiff in replevin for value, property delivered to defendant (Wis. Stats. 1913 sec. 2888).**

[*Proceed as in Form 556 to \* and then continue*]:

And the plaintiff having in open court elected to take judgment absolutely for the value of said property, and damages for the detention;

Now, on motion of L.... M...., attorney for the plaintiff,

IT IS ADJUDGED that A.... B...., the plaintiff, do have and recover of C.... D...., defendant, and G.... H.... and J.... K...., his said sureties, upon said undertaking, the sum of ..... dollars, the plaintiff's damages for the detention thereof, together with the sum of ..... dollars taxed and allowed as costs herein, making in all the sum of ..... dollars.

Dated and entered this .... day of ....., 19..

By the Court:

N.... O...., Clerk.

**558. Affidavit in claim and delivery (Cal. C. C. P. 1906 sec. 510).**

[*Title.*]

[*Venue.*]

A.... B.... being duly sworn says: That he is the plaintiff [*or the agent or attorney of the plaintiff*] in the above entitled action; that said plaintiff is the owner of and is lawfully entitled to the possession of the following des-



cribed personal property, to-wit: [*here describe property*]; that the said personal property is wrongfully detained by the said defendant; that the alleged cause of the detention of said property by the defendant, according to the best knowledge, information and belief of affiant, is as follows, to-wit: [*here state the cause*]; that the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, that the actual value of said personal property is . . . . . dollars, according to the best knowledge and belief of this affiant.

A . . . . B . . . .

[*Jurat.*]

[*If the property has been seized on execution but is claimed to be exempt the last paragraph may be changed as indicated in Form 535.*]

**559. Requisition to be endorsed on affidavit (Cal. C. C. P. 1906 sec. 511).**

To the Sheriff of the County of . . . . .

You are hereby required to take the property described in the within affidavit from the defendant if the said property is to be found within your county.

Dated . . . . ., 19..

A . . . . B . . . .  
Plaintiff.

**560. Plaintiff's undertaking in claim and delivery (Cal. C. C. P. 1906 sec. 512).**

[*Title.*]

WHEREAS, it is alleged by the plaintiff in the above entitled action that the defendant in the said action has in his possession, and wrongfully detains, certain personal property belonging to the said plaintiff, to the possession of which the said plaintiff is lawfully entitled, of the value of . . . . . dollars;

And whereas, the said plaintiff is desirous of having the said personal property delivered to him, and, by endorsement in writing upon the affidavit, has required the sheriff of the said county of . . . . . to take the said property from the said defendant,

NOW, THEREFORE, we, the undersigned, residents of the said county in consideration of the premises, and of the delivery of the said property to the said plaintiff, do hereby undertake and acknowledge to the effect that we are jointly and severally bound to the said defendant in the sum of ..... dollars, being double the value of said property, as stated in the affidavit for the prosecution of the said action, and for the return of the said property to the said defendant, if return thereof be adjudged, and for the payment to the said defendant of such sum as may, from any cause, be recovered against the said plaintiff.

Dated ....., 19..

E.... F.... [Seal]

G.... H.... [Seal]

[Qualification of sureties as in Form 312.]

[Approval by Sheriff.]

**561. Sheriff's return in replevin (Cal. C. C. P. 1906 sec. 520).<sup>2</sup>**

[Venue.]

I HEREBY CERTIFY that I received the within affidavit, requisition and undertaking on the .... day of ....., 19.. and that I served the same on the defendant personally at the city of ..... on the .... day of ..... 19.. by then and there delivering to and leaving with him true copies thereof [or that I served the same on the defendant at ..... on the .... day of ..... 19.. by delivering to and leaving with the defendant's agent Y.... Z.... from whose possession the property named in the said affidavit was taken, true copies thereof, he the said defendant not being found], and I further certify that by virtue of and in accordance with the command of said requisition I have duly replevied and delivered to the plaintiff the goods and chattels specified in said affidavit, as so commanded, [or where part only of the goods are recovered insert instead, a part of the goods and chattels specified in said affidavit, to-wit, describe same, and the balance I could not find]. [In case the defendant has given a redeliver undertaking insert, I further certify that after the taking of said goods and before the delivery thereof to

<sup>2</sup>For other forms for use in California the practitioner is referred to

the forms previously given in this chapter for Wisconsin.

the plaintiff, the defendant within named required the return of the same to him and gave to me a written undertaking with sureties conditioned and executed as required by law which said undertaking is returned herewith and in accordance therewith I returned to the said defendant the said goods.]

Dated . . . . ., 19..

L.... M....  
Sheriff . . . . . County.

**562. Affidavit in replevin (Ariz. R. S. 1913 sec. 1604).**

[Here the form previously given for use in California, viz. Form 558 may be used striking therefrom the clause stating the alleged cause of detention which is not required in Arizona.]

**563. Order requiring sheriff to seize the property in replevin (Ariz. R. S. 1913 sec. 1605).**

[Title.]

[Venue.]

To the Sheriff of the County of . . . . .

WHEREAS the above named plaintiff has filed in this court his affidavit [or the affidavit of L.... M.... his agent, or attorney] from which it appears that said plaintiff is the owner of and lawfully entitled to the possession of the following described property viz. [describe property] and that it is wrongfully detained by the defendant, that the actual value of said property is . . . . . dollars and that the same has not been seized under any process, execution or attachment against the property of the plaintiff;

NOW, THEREFORE, you are hereby required to take said above described property from the defendant and deliver the same to the plaintiff.

[SEAL] Witness my hand and the seal of said  
court this .... day of . . . . ., 19..

O.... P....  
Clerk of said Court.

**564. Plaintiff's bond in replevin (Ariz. R. S. 1913 sec. 1606).**

[Title.]

KNOW ALL MEN by these presents that we A.... B.... as principal, and E.... F.... and G.... H.... as

sureties, are firmly held and bound unto C.... D.... the defendant above named in the penal sum of ..... dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Witness our hands hereto this .... day of ....., A. D. 19..

THE CONDITIONS of the foregoing obligation are such that, whereas the above bounden A.... B.... has this day brought an action against the above named defendant, in the ..... court of ..... county, state of Arizona, to recover possession of the following described personal property, [*here describe property*] unlawfully detained from the possession of said plaintiff in the above entitled cause, as it is claimed;

Now, therefore, if the said A.... B.... shall prosecute said action with effect, and without delay, and return the property hereinbefore described to the defendant in said action, if return thereof be adjudged, and in default of said delivery if he shall pay the assessed value of said property, and all damages for the taking and detention thereof, and pay all costs that may accrue in said action, then this obligation shall be null and void, otherwise to remain in full force and effect.

A.... B....  
E.... F....  
G.... H....

[*Venue.*]

E.... F.... and G.... H.... being each duly sworn each for himself says that he is a resident and free holder [*or householder*] within the state of Arizona and is worth the sum of ..... dollars exclusive of all property exempt from execution and after the payment of all his debts.

[*Jurat.*]

E.... F....  
G.... H....

**565. Defendant's redelivery bond (Ariz. R. S. 1913 sec. 1607).**

[*The last preceding forms may be followed with the necessary changes in the names of the parties down to the condition and then proceeding*]:

THE CONDITION of this obligation is such that whereas, the above entitled action has been commenced by the plaintiff for the recovery of the possession of the following described personal property [*describe same*] and whereas, an order requiring the sheriff of . . . . . county to take the said property and deliver the same to the plaintiff has been duly made in said action and the said sheriff has taken [*or is about to take*] the said property;

Now, therefore, if the said defendant C. . . . D. . . . shall deliver such property to the plaintiff, if delivery be adjudged, and in default of such delivery shall pay the assessed value of such property and all damages for injuries to the same and for the taking and detention thereof and all costs which may accrue in said action, then this obligation shall be null and void, otherwise to remain in full force and effect.

C. . . . D. . . .

E. . . . F. . . .

G. . . . H. . . .

[*Qualification of sureties as in last preceding form.*]

**566. Affidavit in replevin and subsequent papers (Ark. Dig. of Stats. 1904 sec. 6853-6871).**

[*In Arkansas forms have been provided in the statutes which may be used in Replevin actions, (Ark. Dig. of Stats. 1904 p. 1640 et seq.) and it is not deemed necessary to insert them here.*]

**567. Affidavit in replevin (Colo. Code Ann. 1911 sec. 86).**

[*The form heretofore given in this chapter for use in California may be used in Colorado omitting the clause stating the cause of detention of the property, and substituting the word "real" for the word "actual" in the clause which states the value of the property. There should be added at the close of the affidavit the following statement*]: That a summons directed to the defendant and subscribed by R. . . . S. . . . attorney for the plaintiff has already issued in said action.

A. . . . B. . . .

[*Jurat.*]



568. Plaintiff's bond in replevin (Colo. Code Ann. 1911 sec. 87).

[Title.]

WHEREAS, it is alleged by the plaintiff in his affidavit filed in the above entitled action, that the defendant C.... D... has in his possession and unjustly detains certain personal property, to-wit: [*here describe property*] belonging to said plaintiff, to the possession of which the said plaintiff claims to be lawfully entitled, of the value as stated in said affidavit, of ..... dollars;

And whereas, the said plaintiff is desirous of having the said personal property delivered to him and a writ being about to issue requiring the sheriff of the said county of ..... to take the said property from the said defendant;

NOW, THEREFORE, we, the undersigned, do hereby undertake to the effect that we are jointly and severally bound unto the defendant in the sum of ..... dollars, being double the value of said property as stated in said affidavit for the prosecution of the said action without delay and with effect, and for the return of the said property to the said defendant, if return thereof be adjudged, and for the payment to the said defendant of such sum of money as may, from any cause, be recovered against the said plaintiff.

Dated this .... day of ....., A. D. 19..

E.... F.... [Seal]

G.... H.... [Seal]

[Venue.]

E.... F.... and G.... H.... the sureties in the above undertaking being each duly sworn each for himself says that he is a resident and freeholder within said county of ..... and that he is the owner of property in said county, of value greater than the amount named in said undertaking as the penalty thereof namely ..... dollars over and above his just debts and liabilities in property not by law exempt from levy and sale upon execution.

E.... F....

G.... H....

[Jurat.]

[Approved by the Clerk.]



sureties, all of the county of . . . . ., state of Colorado, are held and firmly bound unto L. . . . M. . . . , Sheriff, of the county aforesaid, and to his executors, administrators and assigns, in the penal sum of . . . . . dollars, lawful money of the United States, for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this . . . . day of . . . . ., 19. . .

THE CONDITION of the above obligation is such, that whereas, on the . . . . day of . . . . ., in the year 19. . . the said A. . . . B. . . . sued out of the . . . . . court of the county of . . . . . a writ of replevin against C. . . . D. . . . , defendant, for the recovery of the following goods and chattels, to-wit: [*here describe property*];

And the said C. . . . D. . . . , defendant, having required a return of the said property, goods and chattels;

NOW, if the said C. . . . D. . . . defendant, shall deliver the said property, goods and chattels, to the said A. . . . B. . . . plaintiff, if such delivery shall be adjudged, and pay, or cause to be paid to the said plaintiff, such sum of money as for any cause may be recovered against the said C. . . . D. . . . defendant, then this obligation to be void, otherwise to remain in full force and effect.

E. . . . F. . . . [Seal]

G. . . . H. . . . [Seal]

[*Venue.*]

E. . . . F. . . . and G. . . . H. . . . being each duly sworn each for himself says he is a householder [*or freeholder*] in the state of Colorado and a resident of . . . . . county in said state and that he is the owner of property over and above his just debts and liabilities and property exempt from levy and sale on execution aggregating the value of . . . . . dollars being double the amount of the penalty of the within bond.

A. . . . B. . . .

E. . . . F. . . .

[*Jurat.*]

[*Approval by sheriff.*]

**571. Affidavit, undertaking and following papers in claim and delivery (Idaho Rev. Codes 1908 sec. 4271 et seq.).**

*[The statutes of Idaho governing actions of claim and delivery are literally the same as the California statutes; hence the forms already given for use in California may be adopted and used in Idaho.]*

**572. Petition in replevin by unqualified owner (Iowa Code 1897 sec. 4163).**

*[Title.]*

The plaintiff complains of the defendant and alleges:

I. That he is the full and unqualified owner, and entitled to the present possession of the following described personal property [*particularly describe the property*] and that he acquired his said ownership of said property [*here state how title is acquired, as, by purchase thereof from one E.... F...., or otherwise as the fact may be*].

II. That the said property is of the actual value of ..... dollars, [*if there are several articles the value of each must be given separately*] and that the defendant C.... D.... wrongfully detains possession thereof from the plaintiff at ..... county, Iowa.

III. That the said property was neither taken on an order or judgment of a court against the plaintiff, nor under an execution or judgment against him or against the property.

IV. That the alleged cause of detention of said property, according to the best belief of the plaintiff is [*here state the alleged ground of detention so far as known to the plaintiff*].

V. That the plaintiff has sustained damages by reason of said wrongful detention in the sum of ..... dollars, no part of which has been paid.

WHEREFORE the plaintiff prays for the issuance of a writ of replevin for said property, and demands judgment for the said property and for the possession thereof or for the value thereof if the same cannot be found, and for his damages and costs.

E.... F....

Plaintiff's Attorney.

*[Verification.]*

**573. The same, to recover property seized on execution (Iowa Code 1897 sec. 4163).**

*[Proceed as in Form 572, but insert in place of allegations III and IV the following]:*

III. That the defendant, C.... D...., is the sheriff of ..... county, Iowa, and that he claims to have levied upon the said property as such sheriff under an execution alleged to have been issued against the plaintiff, which is the alleged cause of the detention of said property by the defendant according to the best belief of the plaintiff.

IV. That the said property is exempt by the statute from seizure under execution, for the reason that *[here state the facts in full constituting the grounds of the exemption from seizure]*.

*[Add the following allegation before the prayer for judgment]:*

VI. That on the .... day of ....., 19.., the plaintiff caused to be served upon the said defendant, a written notice, of which a copy is hereto attached marked Exhibit A, claiming that the property described in the foregoing petition belonged to the defendant, and demanding that said defendant release the said property and turn the same over to the plaintiff, which said defendant has failed and refused to do.

**574. Petition in replevin by qualified owner (Iowa Code 1897 sec. 4163).**

*[Proceed as in Form 572, but insert in place of allegation I the following]:*

I. That the plaintiff is the qualified owner, and entitled to the present possession of that certain personal property described as follows *[here describe the property particularly]* and that the plaintiff's said interest and right arise out of the following facts *[here state the facts showing the plaintiff's qualified ownership for example]* that said property was deposited with the plaintiff for storage by their general owner, one E.... F...., for .... months, under an agreement by said E.... F.... to pay to the plaintiff the storage charges therefor, which charges amount at the present time to the sum of ..... dollars, and that the said property has been taken from the plaintiff without his consent and without payment of said storage charges.



**575. Plaintiff's replevin bond (Iowa Code 1897 sec. 4167).**

[*Title.*]

KNOW ALL MEN by these presents that we, A.... B...., of the county of ....., state of Iowa, principal, and G.... H.... and J.... K...., of the same county, as sureties, are held and firmly bound unto C.... D.... in the penal sum of ..... dollars, lawful money of the United States, well and truly to be paid to the said C.... D...., his heirs, executors and assigns.

THE CONDITION of this obligation is such that, whereas the said A.... B.... did on the .... day of ....., 19.., file in the clerk's office of the district court, state of Iowa, for ..... county, his petition claiming of the said C.... D.... the present possession of [*here describe the property*] and praying for the issuance of a writ of replevin therefor.

Now, if the said A.... B.... shall appear at the next term of said court and prosecute his said action to judgment and return the property if such be awarded, and also pay all costs and damages that may be adjudged against him in said action, then this obligation to be void; otherwise to remain in full force and virtue.

Dated ....., 19..

A.... B....  
G.... H....  
J.... K....

[*Venue.*]

G.... H.... and J.... K.... being each duly sworn, on oath, each for himself, says, that he is a resident of the state of Iowa; that he is one of the above named sureties in the foregoing bond; that he is worth double the sum secured by said bond, to wit, the sum of ..... dollars, over and above all his demands and liabilities, and that he has property liable to execution in the state of Iowa equal to the sum secured by said bond, to-wit, the sum of ..... dollars.

G.... H....  
J.... K....

[*Jurat.*]

[*Add approval by the Clerk of Court.*]

**576. Writ of replevin (Iowa Code 1897 sec. 4168).**

[Title.]

THE STATE OF IOWA

To the Sheriff of ..... County.

Greeting:

WHEREAS A.... B...., plaintiff, on the .... day of ....., 19.., filed his duly verified petition in the clerk's office of the district court of the state of Iowa, in and for ..... county, against C.... D...., defendant, claiming of him the following described personal property, to-wit [*here describe property*] which the said plaintiff alleges is wrongfully detained from him by the said defendant, and the plaintiff having executed a bond to the defendant, with sureties approved by me as required by law and filed the same in my office:

YOU ARE, THEREFORE, hereby commanded to take the said property above described and deliver the same without delay to the plaintiff and of this writ make legal service and due return thereof, to said court on or before the first day of the next term thereof, to be begun and holden at the court house in ....., in the county of ....., Iowa, on the .... day of ....., 19..

WITNESS E.... F...., clerk of the district court, with the seal of said court hereunto affixed, this .... day of ..... 19..

[SEAL]

E.... F....  
Clerk ..... Court,  
..... County, Iowa.

**577. Affidavit of concealment of property (Iowa Code 1897 sec. 4171).**

[Title.]

[Venue.]

A.... B.... being duly sworn, says that on the .... day of ....., 19.., he commenced an action in the district court of ..... county, Iowa, against C.... D.... to recover the possession of the following described personal property, to-wit [*here describe the property*]; that the said C.... D.... has concealed [*or disposed of*] the said property [*or some portion of it, describing same*] so that the writ of re-

plevin can not be executed [*here state the facts of the concealment so far as known*].

He therefore prays that said C.... D.... may be brought before this court [*or judge*] to be dealt with according to law.

A.... B....

[*Jurat.*]

**578. Defendant's delivery bond in replevin (Iowa Code 1897 sec. 4172).**

[*Title.*]

KNOW ALL MEN by these presents that we, C.... D...., principal, and G.... H.... and J.... K...., sureties, are held and firmly bound unto C.... D...., his executors and assigns, in the penal sum of ..... dollars, well and truly to be paid.

THE CONDITION of this obligation is such, that, whereas in an action in the district court of ..... county, Iowa, wherein A.... B.... is plaintiff and C.... D.... is defendant, a writ of replevin has been issued, directing the sheriff of said county to take the personal property therein described and deliver the same to said plaintiff.

Now, if the said C.... D.... shall appear in and defend the said action, and deliver the said property to the plaintiff, if he recover judgment therefor, in as good condition as it was when said action was commenced, and shall also pay all costs and damages that may be adjudged against him, for the taking or detention of said property, then this obligation to be void; otherwise to remain in full force and virtue.

Dated the .... day of ....., 19..

C.... D...., Principal.

G.... H.... and J.... K...., Sureties.

[*Add qualification of sureties as in plaintiff's bond Form 575 and approval of sureties by the Clerk of Court or Sheriff.*]

**579. Notice to defendant to choose appraiser (Iowa Code 1897 sec. 4173).**

[*Title.*]

To C.... D....,

YOU ARE HEREBY NOTIFIED that by virtue of a writ of replevin issued out of the district court of .....

county, Iowa, in an action therein pending, wherein A.... B.... is plaintiff and C.... D.... is defendant, and commanding me to take possession of [*here describe the property*] I have taken possession of said property.

And whereas the said C.... D...., defendant in said action, has given a delivery bond, and said property has been turned over to me and the said plaintiff has requested me to have said property appraised, you the said defendant are therefore required to choose an appraiser on your own behalf to value said property according to law.

Dated ....., 19..

E.... F....

Sheriff ..... County, Iowa.

### 580. Appraisement (Iowa Code 1897 sec. 4173).

[*Title.*]

[*Venue.*]

We, the undersigned appraisers, selected to examine and appraise the property hereinafter described, which was taken by R.... S...., sheriff of ..... county, Iowa, by virtue of a writ of replevin issued out of the clerk's office of the district court in favor of A.... B...., against C.... D...., defendant in said action, having been duly sworn, do hereby report that we have valued said property according to its fair value at this time, and that the schedule hereto annexed contains a correct inventory of said property, and that the values therein affixed to each article respectively are the fair values thereof, viz: [*describe each article and give value*].

Signed this .... day of ....., 19..

L.... M....

N.... O....

[*Venue.*]

L.... M.... and N.... O...., being each duly sworn, each for himself deposes and says that the foregoing is a just and true appraisement of the property therein described, to the best of his knowledge and belief.

L.... M....

N.... O....

[*Jurat.*]

**581. Execution in replevin (Iowa Code 1897 sec. 4177).**

[Title.]

THE STATE OF IOWA

to the Sheriff of ..... County

Greeting:

WHEREAS on the .... day of ....., 19.., by the judgment of the district court of ..... county, Iowa, A.... B.... recovered judgment against C.... D.... for the possession of the following described property, to-wit: [*particularly describe property, with value found*] together with ..... dollars, damages and costs, in a certain action then pending in said court, wherein A.... B.... was plaintiff and C.... D.... was defendant, which judgment remains in force and unsatisfied;

You are, therefore, commanded that you cause the said above described property forthwith to be delivered to the said A.... B...., and that you cause to be made of the goods and chattels, lands and tenements of the said C.... D.... subject to execution in your county, the sum of ..... dollars damages and ..... dollars costs of said action, together with all legal costs that may accrue by virtue of this writ, with legal interest, and also in case a delivery of said property, or any part thereof, can not be had, that you further cause to be made of the goods and chattels, lands and tenements of said C.... D.... subject to execution, the sum of the value of said property as above specified with legal interest thereon from the .... day of ....., 19.. [*date of the judgment*], and have said money in our said court in seventy days from the date hereof, to render the same unto the said A.... B.... and have you then and there this writ with your doings thereon.

WITNESS L.... M...., clerk of said court, with the seal thereof hereto affixed this .... day of ....., 19..

L.... M....

[SEAL]

Clerk District Court,  
..... County.**582. Affidavit, undertaking and order of delivery in replevin (Kans. Gen. Stats. 1909 sec. 5769 et seq.).**

[*The Kansas statutes governing replevin are substantially like the statutes of Nebraska hence the forms given later in*



*this chapter for use in the latter state may with slight changes be used in Kansas.]*

**583. Defendant's redelivery bond in replevin (Kans. Gen. Stats. 1909 sec. 5775).**

[*Title.*]

WHEREAS an order for the delivery of the following goods and chattels to-wit: [*here describe property*] has been issued out of the . . . . . court of . . . . . county, Nebraska in the above entitled action; and whereas pursuant to said order R. . . . S. . . . sheriff of said county has taken said goods and chattels into his possession;

NOW THEREFORE, we, G. . . . H. . . . and J. . . . K. . . . of . . . . ., in said county, do hereby promise and undertake to the plaintiff A. . . . B. . . . in the sum of . . . . . dollars that the defendant will deliver the said property to the plaintiff if such delivery be adjudged and will pay all costs and damages that may be awarded against him in said action.

Dated . . . . ., 19..

G. . . . H. . . .  
J. . . . K. . . .

Executed in my presence and the sureties approved by me this . . . . day of . . . . ., 19..

R. . . . S. . . ., Sheriff.

**584. Affidavit in replevin by general owner (Minn. Gen. Stats. 1913 sec. 7835).**

[*Title.*]

[*Venue.*]

A. . . . B. . . . being first duly sworn says:

*First:* That he is the plaintiff [*or the agent or attorney of the plaintiff*] in the above entitled action;

*Second:* That this is an action in replevin for the recovery of the possession of the following described personal property to-wit, [*here particularly describe the property*]:

*Third:* That the said plaintiff is the owner of said property and entitled to the possession thereof;

*Fourth:* That the said property is wrongfully detained by the defendant;

*Fifth:* That said property was not taken for a tax assessment or fine, nor seized under an execution or attachment against the plaintiff's property;

*Sixth:* That the actual value of said property is ..... dollars.

A.... B....

[*Jurat.*]

*Requisition to be endorsed on the foregoing affidavit.*

To the Sheriff of ..... County, State of Minnesota:

You are hereby required to take the property described in the within affidavit from the defendant in the within entitled cause, and deliver the same to the plaintiff therein, according to law.

Dated ....., 19..

G.... H....  
Plaintiff's Attorney.

**585. Affidavit in replevin by one having special interest only (Minn. Gen. Stats. 1913 sec. 7835).**

[*Proceed as in Form 584, but insert in place of the third allegation as follows:* That the said plaintiff is lawfully entitled to the immediate possession of the personal property herein-after described, by virtue of a special property therein arising out of the following facts, to-wit [*here state facts showing the special property, consult forms given for this purpose in the first part of this chapter for replevin in Wisconsin.*]

**586. Plaintiff's bond in replevin (Minn. Gen. Stats. 1913 sec. 7836)**

[*Title.*]

KNOW ALL MEN by these presents that we, A.... B...., as principal, and G.... H.... and J.... K...., as sureties, are held and firmly bound unto C.... D...., the defendant in this action, in the sum of ..... dollars, lawful money of the United States, to be paid unto the said C.... D...., his heirs, executors, administrators or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and each of our heirs, executors and administrators, firmly by these presents.

THE CONDITION of this obligation is such that, whereas an affidavit has been duly made in this action that the

said defendant wrongfully detains from said plaintiff certain personal property therein described, of the value of . . . . . dollars, and said plaintiff claims the immediate delivery of such property to him as authorized by the statute;

Now, therefore, if the said plaintiff shall prosecute said action with effect, and said property shall be returned to said defendant if a return shall be adjudged, and payment shall be made to said defendant of such sum as for any cause may be adjudged in his favor then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this . . . . day of . . . . ., 19..

	A.... B.... [Seal]
Signed, sealed and delivered	G.... H.... [Seal]
in presence of:	J.... K.... [Seal]
	L.... M....
	N.... O....

[Venue.]

On this . . . . day of . . . . ., 19.., before me, a notary public within and for said county, personally appeared A.... B...., G.... H...., and J...., K...., to me known to be the persons described in and who executed the foregoing and within instrument, and acknowledged that they executed the same as their free act and deed.

P.... Q....  
Notary Public.

[Venue.]

G.... H.... and J.... K.... being duly sworn, each for himself, on oath says, that he is a resident and freeholder of and in the state of Minnesota, and that he is worth the sum below specified opposite his name over and above his debts and other liabilities, and exclusive of his property exempt from execution, to-wit: the said G.... H.... the sum of . . . . . dollars, the said J.... K.... the sum of . . . . . dollars.

G.... H....  
J.... K....

[Jurat.]

The foregoing bond and the sureties thereon are hereby approved, this . . . . day of . . . . ., 19..

R.... S....  
Sheriff . . . . . County.

**587. Exception to sufficiency of sureties (Minn. Gen. Stats. 1913 sec. 7838).**

[*Title.*]

To R.... S...., Esq., Sheriff of ..... County:

TAKE NOTICE that the defendant excepts to the sufficiency of the sureties on the bond which the plaintiff herein has given for the purpose of obtaining the immediate delivery of the property which he claims, and that such sureties are required to justify as provided by statute.

Dated ....., 19..

E..... F.....

Attorney for Defendant.

[*To be served on the sheriff within three days after service of the affidavit and bond.*]

**588. Defendant's bond in replevin (Minn. Gen. Stats. 1913 sec. 7838).**

[*Title.*]

KNOW ALL MEN by these presents that we, C.... D...., as principal, and G.... H.... and J.... K...., as sureties, are held and firmly bound unto A.... B...., the plaintiff in the above entitled action in the sum of ..... dollars lawful money of the United States to be paid unto the said A.... B...., his heirs, executors, administrators, or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

THE CONDITION of this obligation is such, that, whereas certain personal property has been seized in this action by the sheriff of ..... county under and by virtue of an affidavit and demand of immediate delivery made by the plaintiff herein as provided by statute, and said defendant desires a return of such property to him according to the statute in such case provided;

Now, therefore, if said property shall be delivered to said plaintiff if a delivery is adjudged, and if said plaintiff shall be paid such sum as for any cause may be adjudged against the defendant in said action, then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this .... day of ....., 19..

	C....	D....	[Seal]
Signed, sealed and delivered	G....	H....	[Seal]
in presence of:	J....	K....	[Seal]
	L....	M....	
	N....	O....	

[*Acknowledgment and justification and approval as in case of bond by plaintiff.*]

**589. Sheriff's return in replevin to be endorsed on affidavit (Minnesota).**

[*Venue.*]

I HEREBY CERTIFY and return that on the .... day of ....., 19.., at the ..... of ..... in said county, I took from the defendant the property described in the affidavit for replevin hereto attached, and retained the same in my custody for three days after the service upon said defendant of the said affidavit and bond in replevin as hereinafter specified; and said defendant having during said time failed to except to the sufficiency of the sureties on the said bond and failed to give bond for the redelivery of said property to, I thereupon delivered the same to the plaintiff: that on the .... day of ..... 19.., at the ..... of ..... in said county, I served the within affidavit and accompanying bond in replevin herein upon the said defendant C.... D.... by then and there handing to and leaving with him a true and correct copy of each said affidavit and bond and of the indorsements thereon.

R.... S....  
Sheriff ..... County.

**590. Affidavit of third person claiming title to property replevied (Minn. Gen. Stats. 1913 sec. 7843).**

[*With slight changes the form given in the chapter on attachment viz. Form 374 may be used here.*]

**591. Indemnifying bond by plaintiff to sheriff in replevin (Minn. Gen. Stats. 1913 sec. 7843).**

[*With slight changes the form given in the chapter on attachment viz. Form 375 may be used here.*]



**592. Verdict in replevin (Minn. Gen. Stats. 1913 sec. 7811).**

[Title.]

WE, THE JURY in the above entitled action, find that the plaintiff [*or the defendant according to the fact*] is the owner of the property described in the complaint, and entitled to the possession thereof, and assess the value of the property at the sum of ..... dollars, [*add, if damages are claimed by the prevailing party*] and we assess the damages which the plaintiff [*or defendant*] has sustained by reason of the detention [*or taking and withholding*] of such property at the sum of ..... dollars.

Dated ....., 19..

L.... M....

Foreman.

**593. Affidavit in replevin (Mo. R. S. 1909 sec. 2637).**

[Title.]

[Venue.]

The plaintiff states that he is the owner and lawfully entitled to the possession of the following specified personal property: [*here describe the property*]. [*If he is not the owner but has a special property or interest and is thereby entitled to the possession, the allegation that he is the owner should be omitted. If an agent or attorney makes the affidavit he should state the fact and allege that he makes the affidavit in the plaintiff's behalf*]; that the same has not been seized under any process, execution or attachment against the property of the plaintiff but is wrongfully detained by the defendant at the county of .....; and that the plaintiff will be in danger of losing the said property, unless it be taken out of the possession of the defendant, or otherwise secured.

A.... B....

[Jurat.]

**594. Order for delivery in replevin (Mo. R. S. 1909 sec. 2638).**

[Title.]

THE STATE OF MISSOURI

to C.... D.... and to the Sheriff of ..... County

Greeting:

WHEREAS the above entitled action has been commenced and is now pending in the . . . . . court of . . . . . county for the possession of certain personal property particularly described as follows [*describe property*];

And whereas the plaintiff has filed his affidavit in said action containing the allegations required by statute to entitle him to immediate delivery of said property,

NOW THEREFORE, it is hereby ordered that the said defendant C. . . . D. . . . be and he is hereby required and commanded in the name of the state of Missouri to deliver the said property to the sheriff of . . . . . county; and it is further required and commanded that the said sheriff upon delivery to him of the bond required by law in such case made and provided do take the said property from the defendant if the same be not delivered as hereinabove required, and that he deliver the same to the plaintiff.

Witness my hand and the seal of said

[SEAL]

Court this . . . . day of . . . . ., 19..

J. . . . K. . . .

Judge of the . . . . . Court.

**595. Plaintiff's bond in replevin (Mo. R. S. 1909 sec. 2639).**

[*Title.*]

WE, A. . . . B. . . . as principal, and E. . . . F. . . . and G. . . . H. . . ., sureties, hereby undertake and acknowledge ourselves bound to the defendant C. . . . D. . . . in the sum of . . . . . dollars, for the payment whereof, well and truly to be made, we bind ourselves jointly and severally our heirs, executors and administrators.

THE CONDITION of the above obligation is that whereas A. . . . B. . . . has brought an action in the . . . . . court of . . . . . county, Missouri, against C. . . . D. . . ., defendant, for the possession of personal property, as set forth in the affidavit of plaintiff filed in said court, returnable to the next term thereof, wherein the sum sworn to is . . . . . dollars.

Now, therefore, if the said A. . . . B. . . . shall prosecute said action with effect and without delay; return all property that may be adjudged to be returned to the defendant, and, in default of such delivery, pay to the defendant the assessed

value of said property, and all damages that may accrue by reason of the taking and detention thereof, and all costs that may accrue in this action, then this obligation is to be void, otherwise to remain in full force.

Witness our hands and seals, this . . . . day of . . . . . A. D. 19..

A. . . . B. . . . [Seal]

E. . . . F. . . . [Seal]

G. . . . H. . . . [Seal]

[*Venue.*]

E. . . . F. . . . and G. . . . H. . . . being first duly sworn each for himself says that he is a resident and householder [or freeholder] within the state of Missouri, and is worth the amount for which the above bond is given, to-wit the sum of . . . . . dollars exclusive of property exempt from execution and after paying all his debts.

E. . . . F. . . .

G. . . . H. . . .

[*Jurat.*]

The above bond approved both as to form and sufficiency of sureties.

R. . . . S. . . .

Sheriff . . . . . County.

**596. Defendant's redelivery bond in replevin (Mo. R. S. 1909 sec. 2640).**

[*Proceed as in last preceding form, making the necessary changes in the names of the parties, as far as the condition and continue as follows*]:

THE CONDITION of this obligation is that whereas, R. . . . S. . . ., sheriff of . . . . . county, Missouri, has taken from the defendant certain personal property by virtue of the order of delivery, made in the above entitled action, and is about to deliver the same to the plaintiff which property the said defendant C. . . . D. . . . desires be redelivered to him, the said defendant;

NOW, THEREFORE, if the said C. . . . D. . . . shall deliver the said property to said plaintiff, if such delivery be adjudged, and in default of such delivery shall pay to the plaintiff the assessed value of such property and all damages for injuries to said property and for the taking and deten-

tion, or detention thereof, and all costs which may accrue in this action, then this obligation is to be void otherwise to remain in full force.

Witness our hands and seals this . . . . day of . . . . ., 19..

C. . . . D. . . . [Seal]

E. . . . F. . . . [Seal]

G. . . . H. . . . [Seal]

[*Qualification of sureties and approval as in last preceding form.*]

**597. Affidavit, undertaking and requisition in claim and delivery (Mont. Rev. Codes 1907 sec. 6622 et seq.).**

[*Montana statutes follow the statutes of California so closely that the forms already given in this chapter for use in California may with slight changes be used in Montana.*]

**598. Affidavit in replevin (Neb. R. S. 1913 sec. 7823).**

[*Title.*]

[*Venue.*]

A. . . . B. . . . being first duly sworn, deposes and says: that he is the plaintiff [*or the agent, or attorney of the plaintiff*] in the above entitled action and makes this affidavit on his own [*or said plaintiff's*] behalf; that said plaintiff is the owner of the personal property hereinafter described [*or has a special ownership and interest in the property hereinafter described arising from the following facts, here state facts showing special ownership or interest consulting forms heretofore given for that purpose for replevin in Wisconsin*];

That said property is described as follows: [*here insert description of property*] and that said plaintiff is entitled to the immediate possession of said property;

That the said property is wrongfully detained by C. . . . D. . . ., the said defendant;

That the said property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under the chapter of the Code of Civil Procedure providing for the replevin of per-

sonal property, or any other mesne or final process issued against said plaintiff.

A.... B....

[*Jurat.*]

**599. The same, where exempt property has been seized on execution (Neb. R. S. 1913 sec. 7823).**

[*Proceed as in last preceding form, but insert in place of the last paragraph the following:*]

That the said property has not been taken for the payment of any fine, tax or amercement assessed against the plaintiff, or by virtue of an order of delivery issued under that chapter of the Code of Civil Procedure providing for the replevin of personal property, but that the same was taken by the defendant as sheriff of said county of . . . . ., upon an execution issued out of said court and against the property of the plaintiff to enforce a judgment in an action wherein one L . . . M . . . was plaintiff, and said A . . . . B . . . . was defendant; and that the said A . . . . B . . . ., at the time of the entry of said judgment and the issuance of said execution was a resident of this state and the head of a family, and was a mechanic and builder, and that the property herein described constituted his tools and instruments as such mechanic and builder, used and kept for the purpose of carrying on his said business, and were and are exempt from seizure upon execution [*or otherwise state the facts showing the property to be exempt*].

**600. Order of replevin (Neb. R. S. 1913 sec. 7824).**

[*Title.*]

[*Venue.*]

To the Sheriff of said County:

GREETING: Whereas A . . . . B . . . ., plaintiff, has commenced an action in the District Court of . . . . . county against C . . . . D . . . ., defendant, to recover the following specific personal property, to-wit: [*here describe property*] now in the possession of C . . . . D . . . ., defendant, in said county and state, and has filed in my office the necessary affidavit to obtain an order for the immediate delivery of the personal property aforesaid;



You are therefore commanded to seize and take into your custody all the personal property described above, and deliver the same to said A.... B...., the plaintiff in this action; and of this order, and your doings thereon make due return on or before the .... day of ....., 19..

GIVEN under my hand and the seal of said court, this .... day of ....., 19..

[SEAL]

E.... F....  
Clerk of District Court.

**601. Bond in replevin (Neb. R. S. 1913 sec. 7827).**

[Title.]

Whereas an order for delivery of the following goods and chattels, to-wit: [*here describe property*] has been issued out of the ..... court of ..... county, Nebraska, in an action now pending in the said court, wherein A.... B.... is plaintiff, and C.... D.... is defendant, upon an affidavit duly made by the said A.... B....; and whereas, pursuant to said order R.... S...., sheriff of said county, has taken said goods and chattels and the same have been valued by two responsible persons under oath, at the sum of ..... dollars;

NOW, THEREFORE, we, G.... H.... and J.... K.... do promise and undertake to the said R.... S.... in the sum of ..... dollars, that the said plaintiff shall duly prosecute the action aforesaid, and pay all the costs and damages which may be awarded against him, and shall return the said property to said defendant in case a judgment for the return thereof shall be rendered against the plaintiff herein.

Dated this .... day of ....., 19..

Executed in my presence, and the sureties approved by me, this .... day of ....., 19..

R.... S...., Sheriff.

G.... H....  
J.... K....

**602. Oath and appraisal in replevin (Neb. R. S. 1913 sec. 7828).**

[Title.]

[Venue.]

We, the undersigned, chosen by R.... S...., sheriff of ..... county, Nebraska, to assess the value of the property hereinafter described, which has been taken by said sheriff on an order of delivery in the above entitled action, having been first duly sworn truly to assess the value thereof, do hereby assess the value thereof upon actual view of each article as follows: [*insert description and carry out valuation of each article*] making a total valuation of ..... dollars.

L.... M....

N.... O....

Subscribed in my presence and  
sworn to before me this .... day  
of ....., 19..

R.... S....

Sheriff ..... County.

**603. Affidavit, requisition and undertaking in claim and delivery (N. Dak. Rev. Codes 1905 sec. 6917 et seq.).**

[*The statutes of North Dakota on this subject are practically identical with the statutes of Wisconsin and the forms already given for use in the latter state may be used in North Dakota.*]

**604. Affidavit, requisition and undertaking in claim and delivery (S. Dak. C. C. P. 1908 sec. 184 et seq.).**

[*The statutes of South Dakota are practically identical with Wisconsin and the forms given for use in the latter state may be used.*]

**605. Affidavit in replevin (Okla. Comp. laws 1909 sec. 5688).**

[Title.]

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff [*or the agent or attorney of the plaintiff*] in the above entitled action, and that said plaintiff is the owner [*if he be not the general owner but has only a special interest in the property state what that interest is and the facts relating thereto consulting the forms heretofore given in this chapter for use in Wisconsin*] of the property hereinafter described and is entitled to the immediate possession thereof: that the said property and the actual value of each article is as follows:

*[Insert each article in detail with its value set opposite.]*

All of the aggregate actual value of . . . . . dollars; that said property is wrongfully detained by the defendant, C. . . . D. . . . and that said property was not taken in execution on any order or judgment against said plaintiff or for the payment of any tax, fine, or amercement assessed against him; or by virtue of any order of delivery issued in replevin or any other mesne or final process issued against said plaintiff.

*[In case the property was taken on execution but is exempt insert in lieu of the last sentence]:* that said property was taken in execution on a . . . . . rendered in favor of one J. . . . K. . . . against said plaintiff and that the same is exempt by law from being so taken.

A. . . . B. . . .

*[Jurat.]*

**606. Undertaking in replevin (Okla. Comp. laws 1909 sec. 5689).**

*[Title.]*

WHEREAS, the above entitled action has been commenced by A. . . . B. . . . against C. . . . D. . . . the defendant above named, for the recovery of the possession of certain personal property claimed by said plaintiff and described in the petition filed herein; and whereas the said A. . . . B. . . . filed in said court an affidavit as required by law, to procure an immediate delivery of said property.

NOW, we, the undersigned, undertake to said defendant in the penal sum of . . . . . dollars, for the payment of which we bind ourselves, our heirs, administrators and assigns, jointly and severally. Conditioned that said plaintiff shall duly prosecute the above action, and pay all costs and damages that may be awarded against him and, if said property be delivered to him that he will return the same to said defendant if such return be adjudged.

E. . . . F. . . .

G. . . . H. . . .

*[Venue.]*

E. . . . F. . . . and G. . . . H. . . . the sureties on the foregoing undertaking, being duly sworn, each for himself says: I am a resident householder and freeholder within the state

of Oklahoma, and have property within said state worth over and above all my just debts and liabilities, exclusive of property exempt from execution, the sum set out and stated below, that is to say: I, E.... F.... am worth the sum of ..... dollars; I, G.... H...., am worth the sum of ..... dollars.

[*Jurat.*]

I hereby approve the above undertaking this .... day of ....., 19..

E.... F....  
G.... H....  
L.... M....  
Clerk ..... Court.

**607. Order of delivery (Okla. Comp. laws 1909 sec. 5690).**

[*Title.*]

THE STATE OF OKLAHOMA,  
to the Sheriff of ..... County,  
Greeting:

WHEREAS, A.... B.... has commenced the above entitled action in the ..... court of the state of Oklahoma, within and for the county of ..... for the recovery of the following specific personal property, to-wit: [*Give a list of the articles giving the value of each and the total value of all*], and has filed his affidavit and undertaking, as required by law, in the clerk's office of said court, to obtain an order for the immediate delivery of said goods and chattels.

THIS, THEREFORE, is to command you, as such sheriff, to take such goods and chattels above described, and deliver the same to the said A.... B...., plaintiff in said action, and of this order and your proceedings thereon, make due return on or before the .... day of ....., 19..

In witness whereof, I have hereunto set  
[SEAL] my hand and the seal of said court at  
..... this .... day of ....., A. D.  
19..

L.... M....  
District Clerk.

**608. Sheriff's return to order of delivery (Oklahoma).**

[*Venue.*]

I hereby certify that I received the within order on the

.... day of ....., 19.., and that on the .... day of ....., 19.., I executed the same by taking possession of the property described therein, and after holding the same twenty-four hours, I delivered the same to said plaintiff; [or if the defendant has given a redelivery bond: and the defendant, within twenty-four hours after the service of said writ, having given an undertaking as required by law, I returned said property to said defendant.]

R.... S....  
Sheriff ..... County.

**609. Defendant's redelivery bond (Okla. Comp. laws 1909 sec. 5693).**

[Title.]

Whereas, the above named plaintiff has caused to be issued out of the ..... court of ..... county in the above entitled cause an order of delivery under and by authority of which the property of the defendant described therein has been taken by R.... S.... as sheriff of said county. Now, therefore the undersigned E.... F.... and G.... H.... do hereby undertake and promise the plaintiff in the sum of ..... dollars that the defendant will deliver said property to said plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him in the above entitled action.

WITNESS our hands, this .... day of ....., 19..

E.... F....  
G.... H....

[Qualification of sureties as in Form 606.]

[Approval by the sheriff.]

**610. Affidavit, requisition and undertaking in claim and delivery (Oregon laws 1910 sec. 283 et seq.).**

[The forms heretofore given in this chapter for use in Wisconsin may here be used, the laws of the two states in this subject being practically the same.]

**611. Affidavit for sequestration (Tex. Civ. Stats. Ann. 1913 art. 7094, 7095).**

[Title.]

[Venue.]

On this .... day of ....., 19.. personally appeared



before the undersigned the clerk of the . . . . . court [*or otherwise give the official title of the officer according to the fact*], A. . . . B. . . . who being first duly sworn says, \* that he is the owner of the following described property situated in . . . . . county, state of Texas, and is entitled to the possession thereof viz: [*here describe the property giving the name of each article and the value thereof separately*], all of the aggregate value of . . . . . dollars.

[*If the action be to foreclose a lien on personal property substitute the following beginning at \**]: that he is the plaintiff in the above entitled and numbered writ and brings the same to enforce and foreclose a certain lien in writing to-wit a chattel mortgage [*or otherwise describe the lien according to the fact*] executed by the defendant C. . . . D. . . . in favor of . . . . . on the . . . . . day of . . . . ., 19.. upon the following described property situated in the county of . . . . ., Texas, viz. [*here describe property giving value of each article and aggregate value of all the property*];

That all of said property is now in the possession of the above named defendant C. . . . D. . . .; that affiant fears t! e said defendant will injure, ill-treat, waste or destroy said property, or remove the same out of the limits of said . . . . . county during the pendency of this suit; [*or state the injurious action which is feared on the part of the defendant in the terms required by the proper subdivision of sec. 7094 supra*]. [*If the action is to enforce a lien add*]: that said [*name lien*] is, within the knowledge of affiant, just and unsatisfied, and the amount of the same still unsatisfied is . . . . . dollars, which fell due on the . . . . day of . . . . . [*or which will become due . . . . ., 19..*] and that the said plaintiff is the legal owner and holder of said [*name the lien*] so sought to be enforced and foreclosed.

A. . . . B. . . .

[*Jurat.*]

**612. Sequestration bond (Tex. Civ. Stats. Ann. 1913 art. 7097).**

[*Title.*]

KNOW ALL MEN by these presents, that we, A. . . . B. . . ., as principal, and E. . . . F. . . . and G. . . . H. . . . as sureties, do hereby acknowledge ourselves jointly and

severally bound to pay to C.... D.... the above named defendant, the sum of ..... dollars;

CONDITIONED that said A.... B...., who, on the .... day of ....., 19.., sued out a writ of sequestration in a certain suit pending in the ..... court of ..... county, Texas, wherein A.... B.... is plaintiff, and C.... D...., defendant, sequestering certain personal property described in the sequestration affidavit filed in this suit, and property being in the possession of the defendant and of the value of ..... dollars in the aggregate, will pay to the defendant all such damages as may be awarded against the said A.... B.... and all costs, in case it shall be decided that such writ of sequestration was wrongfully issued.

Dated ....., 19.. A.... B....  
E.... F....  
G.... H....

Approved the .... day of ....., 19..  
Clerk ..... Court.

**613. Writ of sequestration (Tex. Civ. Stats. Ann. 1913 art. 7099).**

THE STATE OF TEXAS

to the Sheriff or any Constable of ..... County  
Greeting:

YOU ARE HEREBY COMMANDED to take into your possession the following described property, if to be found in your county, viz: [*here describe the property as it is described in the affidavit*], and keep the same subject to the future order of our ..... court in and for the county of ..... in a certain cause therein pending wherein A.... B.... is plaintiff, and C.... D.... defendant, unless the same is replevied according to law.

Herein fail not, but have you this writ, with your return thereon, showing how you have executed the same, before our ..... court in and for the county of ..... to be holden in the court house thereof in ..... on the .... day of ....., 19..

Given under my hand and the seal of said  
Court, on this the .... day of .....,  
A. D. 19..

[SEAL]

L.... M...., Clerk.  
..... Court, ..... County, Texas.

**614. Defendant's replevy bond in sequestration (Tex. Civ. Stats. Ann. 1913 art. 7104, 7105).**

[Follow Form 612 to the condition making such changes as are necessary resulting from the fact that the bond is given by the defendant instead of the plaintiff and proceed]:

CONDITIONED that said C.... D.... will not injure, ill-treat, waste or destroy the property sequestered in this suit and will not remove the same outside of the limits of ..... county, during the pendency of the suit [*or negative any other grounds for sequestration stated in plaintiff's affidavit in terms as therein stated*] and will have such property with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court or will pay the value thereof and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

Dated &c. [*Close as in Form 612.*]

[*In case of real estate, insert as a condition: that the said C.... D.... will not injure the real estate sequestered in this suit and that he will pay the value of the rents of the same in case he shall be condemned to do so.*]

**615. Plaintiff's replevy bond in sequestration (Tex. Civ. Stats. Ann. 1913 art. 7110).**

[Follow Form 612 to the condition and then proceed]:

CONDITIONED that the said A.... B.... shall have the property sequestered in this suit forthcoming, together with the fruits, hire revenue and rent of the same to abide the decision of the Court.

Dated, &c. [*Close as in Form 612.*]

**616. Affidavit requisition and undertaking in claim and delivery (Utah Comp. laws 1907 sec. 3045 et seq.).**

[*The statutes of Utah on this subject follow very closely the statutes of Wisconsin and California and the forms heretofore given in this chapter for use in the last named states may be used in Utah.*]

**617. Affidavit in claim and delivery (Wash. Rem. and Bal. Code 1910 sec. 708).**

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn, on oath deposes and says: That he is the plaintiff [or the agent or attorney of the plaintiff] in the above entitled cause and that he makes this affidavit for the purpose of securing a writ of replevin herein; that said plaintiff is the owner of all the personal property particularly described and valued as follows: to-wit: [*describe property*] all now located at ..... in the city of ..... in the county of ..... and state of Washington; that said property and every part thereof is wrongfully detained by C.... D.... the above named defendant; that said property has not been taken for a tax, assessment or fine, pursuant to any statute, or seized under an execution or attachment against the property of plaintiff; that the actual aggregate value of said property is ..... dollars.

A.... B....

[*Jurat.*]

**618. Plaintiff's bond in claim and delivery (Wash. Rem. and Bal. Code 1910 sec. 709).<sup>3</sup>**

[*Title.*]

WHEREAS, A.... B.... the plaintiff above named has commenced an action in the above entitled court against C.... D.... the defendant above named for the recovery of certain personal property particularly described in the affidavit on behalf of the plaintiff heretofore made in this action, the aggregate value of which personal property so sought to be recovered is stated in said affidavit to be ..... dollars; and whereas the said plaintiff is required by law to execute a bond to the defendant in double the value of the property, as stated in such affidavit, conditioned for the prosecution of the action and the return of the property and the payment of costs and damages, if adjudged by the court,

NOW, THEREFORE, we A.... B.... as principal, and E.... F.... and G.... H.... as sureties, bind and obligate ourselves, our heirs, executors or administrators and assigns to pay to the said defendant in said action, the full sum of ..... dollars;

<sup>3</sup>For other forms in Claim and Delivery in Washington recourse may be had to the forms hereinbefore given for use in Wisconsin and California.

PROVIDED, HOWEVER, that if said plaintiff.., shall diligently prosecute said action, and return the above described property to said defendant, if the return thereof be adjudged, and shall pay such sum as shall from any cause be recovered against said plaintiff.., then, and in that event, this obligation shall be void; otherwise to be and remain in full force.

A.... B.... [Seal]  
E.... F.... [Seal]  
G.... H.... [Seal]

The foregoing bond taken and approved by me this .... day of ....., A. D. 19.. R.... S....  
[Venue.] Sheriff of ..... County.

E.... F.... and G.... H.... the sureties who executed the within bond being each duly sworn each for himself says that he is a resident of ..... county state of Washington, and is not a counsellor or attorney at law, sheriff, clerk of the superior court or other officer of such court and that he is worth ..... dollars over and above all debts and liabilities exclusive of property exempt from execution.

[Jurat.] E.... F....  
G.... H....

619. Affidavit in replevin (Wyo. Comp. Stats. 1910 sec. 5006).

[Title.]

A.... B.... being duly sworn says that he is the plaintiff, [or the agent, or attorney for the plaintiff] in the above entitled action; that the plaintiff is the owner of certain personal property to recover possession of which this action is brought and which is described as follows: [describe property];

[If the plaintiff is not the owner but only has a special or partial interest in the property insert in place of the foregoing allegation of ownership an allegation showing the character of the interest, e. g.]: that the plaintiff has a special and partial interest in the personal property hereinafter described as a bailee for hire of said goods by reason of the fact that the same were stored with the plaintiff for .... months by their general owner on an agreement to pay ..... dollars per month for such storage and that they have been taken from plaintiff's possession without payment of said storage charges



and without the plaintiff's consent, said goods being described as follows [*insert description*]:

That the plaintiff is lawfully entitled to the possession of said goods and property and that the same is wrongfully retained by the defendant

That said property was not taken on any process issued against the plaintiff [*or that said property was taken on execution issued against the plaintiff but that the same was and is expressly exempt from execution, or exempt upon demand or selection by the plaintiff*] and is not held for a tax [*or is not held for any tax legally assessed or levied against the plaintiff.*]

A.... B....

[*Jurat.*]

**620. Order of replevin (Wyo. Comp. Stats. 1910 sec. 5007).**

[*Form 600 may here be used practically as given.*]

**621. Plaintiff's undertaking in replevin (Wyo. Comp. Stats. 1910 sec. 5010).**

[*Form 601 may here be used substituting the name of the plaintiff as obligee and omitting therefrom the words "and shall return the said property to said defendant in case a judgment for the return thereof shall be rendered against the plaintiff herein"*].

**622. Defendant's undertaking in replevin (Wyo. Comp. Stats. 1910 sec. 5011).**

[*Form 601 may here be used down to the condition and then proceeding as follows*]:

NOW THEREFORE, we, G.... H.... and J.... K.... do promise and undertake to the said plaintiff in the sum of ..... dollars, that the said defendant will deliver the said property to the plaintiff if such delivery be adjudged and will pay all costs and damages that may be awarded against him.

**623. Oath and appraisal (Wyo. Comp. Stats. 1910 sec. 5012).**

[*Form 602 may here be used.*]

## CHAPTER XIII.

### NOTICES AND CLAIMS FOR MECHANIC'S LIENS.

#### WISCONSIN

624. Claim for mechanic's lien by principal contractor.
625. Claim for mechanic's lien by subcontractor or laborer.
626. Notice of subcontractor's or laborer's lien, to be given owner.
627. Preliminary notice by material man or subcontractor of commencement of furnishing materials or work.
628. Affidavit extending time to commence action.
629. Assignment of claim for lien.
630. Notice of assignment of lien claim.
631. Petition for log lien.

#### CALIFORNIA

632. Notice to reputed owner of furnishing materials or labor.
633. Notice of non-responsibility of owner of building.
634. Owner's notice of completion of building or cessation from work.
635. Claim for lien by original contractor.
636. The same, by a material man.
637. Miner's claim for lien.
638. The same, for grading lot.
639. Owner's notice to contractor to defend lien suit.
640. Claim for lien against two contiguous buildings owned by the same person.

#### ARIZONA

641. Statutory claim for lien.

#### ARKANSAS

642. Claim for mechanic's lien.
643. Subcontractor's notice to owner.

#### COLORADO

644. Claim for mechanic's lien.

#### IDAHO

645. Claim for mechanic's lien.

#### IOWA

646. Statement of account for mechanic's lien.
647. Notice of subcontractor's lien.
648. Bond to discharge subcontractor's lien.

#### KANSAS

649. Claim for mechanic's lien by original contractor.
650. The same, where note has been taken.
651. The same, by subcontractor.
652. The same, by laborer.
653. Subcontractor's notice of filing lien.
654. Indemnity bond against mechanic's lien.
655. Claim for mechanic's lien on personal property.

#### MINNESOTA

656. Claim for mechanic's lien.
657. Notice of subcontractor's lien.

#### MISSOURI

658. Claim for lien.

#### MONTANA

659. Claim for lien.

## NEBRASKA

660. Claim for mechanic's lien.  
661. The same, another form.

## NORTH AND SOUTH DAKOTA

662. Claim for mechanic's lien.  
663. The same, another form.  
664. Notice of lien by subcontractor to owner (North Dakota).  
665. Statement by subcontractor (South Dakota).  
666. Notice of thresher's lien (South Dakota).

## OKLAHOMA

667. Claim for mechanic's lien.

## OREGON

668. Claim for mechanic's lien.

## TEXAS

669. Claim for lien, unwritten contract.

## UTAH

670. Claim for lien.  
671. Subcontractor's notice.

## WASHINGTON

672. Materialmen's notice.  
673. Claim for lien.

## WYOMING

674. Claim for lien.

Mechanic's lien laws are universal and are based upon the general idea that the materials and labor which have gone into improvements on land have enhanced the value of the land proportionally, and, as they cannot be separated from the land and returned to the contractor or laborer, it is but fair that the owner who profits by the enhancement should pay for them.

It is generally required that the claimant in order to preserve his lien must file a petition or claim within a certain period after the doing of the work or the furnishing of the materials. If a subcontractor or material man claims a lien he is frequently required to give a preliminary notice to the owner. The statutes are quite diverse and no attempt should be made to enforce a lien in a given state without careful examination of the law of that state.<sup>1</sup>

<sup>1</sup>The statutes in the various states give mechanic's liens as follows:

In Wisconsin (Wis. Stats. 1913 sec. 3314) to every person who, and firm, corporation, or association which, as principal contractor, architect, civil engineer or surveyor performs or procures to be performed any work or labor, furnishes any materials or prepares any plans, specifications or estimates: (1) For or in or about the erection, construction, repair, protection or removal of any dwelling house,

building or appurtenance thereto, structure, bridge, wharf, dock, pier, fence, wall or screen or other permanent erection or any machinery so erected or constructed as to be or become a part of the freehold upon which it is situated; (2) In or about the improving or equipping of any house or building with chandeliers, brackets, wires, pipes or appurtenances for supplying gas, electric or other light, water or heat; (3) In the dredging, digging, excavating,

constructing or equipping any channel, well, cellar, vault, fountain, fishpond, trench or tunnel; (4) In the filling, dredging, improving, digging, driving or removing piles in any water or watercourse, any waterlot, meadow, marsh, swamp or other low lands; (5) In the making or repairing any walk, sidewalk, crosswalk, curbing or apron; (6) In grading, graveling, leveling or otherwise constructing or repairing any street, alley, roadway or gutter upon land, irrespective of any easement on or over said land; (7) Or in setting out or planting any hedge, or fruit or ornamental trees.

*In California* (Cal. C. C. P. 1906 sec. 1183), mechanics, materialmen, contractors, subcontractors, artisans, architects, machinists, builders, miners, and all persons and laborers of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume aqueduct, well, tunnel, fence, machinery, railroad, wagon road, or other structure, have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise; and any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process, has a lien upon the same, and the works owned and used by the owners for reducing the ores from such mining claim or claims, or real property so worked as a mine, for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claims or claims or real property worked as a mine or of the building, or other improvement, or his agent.

*In Arizona* (Ariz. R. S. 1913 sec. 3639), every person, firm or corporation who may labor or furnish materials, machinery, fixtures or tools to be used in the construction, alteration, erection, repair or completion of any building or other structure or improvement whatever has a lien on such house, building, structure or improvements for the work or labor done or materials, machinery, fixtures or tools furnished, whether said work was done or articles furnished at the instance of the owner of the building, or improvement or his agent. The lien herein provided shall extend to the lot or lots of land necessarily connected with the building, structure or improvement made or erected.

*In Arkansas*, (Ark. Dig. of Stats. 1904 sec. 4970), every mechanic, builder, artisan, workman, laborer or other person who does or performs any work upon or furnishes any material, fixtures, engine, boiler or machinery for any building, erection, improvement upon land, or upon any boat or vessel of any kind, or for repairing same, under or by virtue of any contract with the owner or proprietor thereof, or his agent, trustee, contractor, or subcontractor, upon complying with the provisions of the act shall have for his work or labor done, or materials, fixtures, engine, boiler or machinery furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of one acre; or if such building, erection or improvement be upon any lot of land in any town, city or village, then such lien shall be upon such building, erection or improvements and the lots or land upon which the same are situated; or if such erection or improvement be upon any boat or vessel, then upon such boat or vessel, to secure the payment of such work or labor done, or materials, fixtures, engine, boiler or machinery furnished as aforesaid.

*In Colorado*, (Colo. Code Ann. 1911 sec. 4025), all mechanics,



material men, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway or any other structure or improvement, upon land, and also architects, engineers, draughtsmen and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures for the value of such services rendered or labor done or material furnished, whether at the instance of the owner, or of any other person acting by his authority or under him, as agent, contractor, or otherwise, for the work or labor done or services rendered or materials furnished, by each respectively, whether done or furnished or rendered at the instance of the owner of the building or other improvement or his agent.

*In Idaho*, (Idaho Rev. Codes 1908 sec. 5110), every person performing labor upon or furnishing materials to be used in the construction, alteration or repair of, any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mine or mining claim, has a lien upon the same for the work or labor done or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect,

builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: Provided that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

*In Iowa*, (Iowa Ann. Code 1897 sec. 3089), every person who does any labor upon, or furnishes any materials, machinery or fixtures for, any building, erection or other improvement upon land, including those engaged in the construction or repair of any work of internal improvement, and those engaged in grading any land or lot by virtue of any contract with the owner, his agent, trustee, contractor or subcontractor, upon complying with the provisions of this chapter, has for his labor done, or material, machinery or fixtures furnished, a lien upon such building, erection or improvement and upon the land belonging to such owner on which the same is situated or upon the land or lot so graded, to secure payment for such labor done or material, machinery or fixtures furnished.

*In Kansas*, (Kans. Gen. Stats. 1909 sec. 6244), any person who under contract with the owner of any tract or piece of land, or with a trustee, agent, husband or wife of such owner, performs labor or furnishes material for the erection, alteration or repair of any building, improvement or structure thereon, or who furnishes material or performs labor in putting up of any fixtures or machinery in, or attachment to, any such building, structure, or improvement; or who plants any trees, vines, plants or hedge, in or upon said land; or who builds, alters or repairs, or furnishes labor or material for building, altering or repairing any fence or foot-walk in or upon said land, or any sidewalk in any street abutting said land, has a lien upon the whole



of said piece or tract of land, the building and appurtenances, in the manner herein provided for the amount due to him for such labor, material, fixtures or machinery.

*In Minnesota*, (Minn. Gen. Stats. 1913 sec. 7020), whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery, for any of the purposes hereinafter stated, whether under a contract with the owner of such real estate or at the instance of any agent, trustee, contractor, or subcontractor of such owner, has a lien upon said improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution; that is to say, for the erection, alteration, repair or removal of any building, fixtures, bridge, wharf, fence or other structure thereon, or for grading, filling in, or excavating the same, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street or alley upon which the same abuts.

*In Missouri*, (Mo. R. S. 1909 sec. 8212), every mechanic or other person, who does or performs any work or labor upon, or furnishes any material, fixtures, engine, boiler or machinery for, any building, erection or improvements upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his agent, trustee, contractor or subcontractor, upon complying with the provisions of this article, has for his work or labor done, or materials, fixtures, engine, boiler or machinery furnished, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of one acre; or if such building, erection or improvement be upon any lot of land in any town, city or village,

then such lien shall be upon such building, erection or improvements, and the lot or land upon which the same are situated, to secure the payment for such work or labor done, or materials, fixtures, engine, boiler or machinery furnished as aforesaid.

*In Montana*, (Mont. Rev. Code, 1907 sec. 7290), every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person performing any work or labor upon, or furnishing any material, machinery, or fixture for any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas or water works or plant, or any improvements upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done, or material furnished.

*In Nebraska*, (Neb. R. S. 1913 sec. 3823), any person who performs any labor or furnishes any material or machinery or fixtures, including gas and electric apparatus and lighting fixtures, whether detachable or undetachable, for the erection, improvement, reparation or removal of any house, mill or manufactory, or building or appurtenance by virtue of a contract or agreement, expressed or implied, with the owner thereof or his agents, has a lien to secure the payment of the same upon such house, mill, manufactory, building or appurtenance and the lot of land upon which the same stands.

*In North Dakota*, (N. Dak. Rev. Codes 1905 sec. 6237), any person who performs any labor upon or furnishes any materials, machinery or fixtures for the construction or repair of any buildings or other structures upon land, or in making any other improvements thereon, including fences, sidewalks, paving wells, trees, grades, drains or excavations under a contract with the owner of

such land, his agent, trustee, contractor or subcontractor, or with the consent of such owner, has, upon complying with the provisions of this chapter, for his labor done or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement and upon the land belonging to such owner on which the same is situated or to improve which the work was done, or the things furnished, to secure the payment for such labor, material, machinery or fixtures; provided that no person who furnished any materials, machinery or fixtures as aforesaid, for a contractor or a subcontractor shall be entitled to file such lien unless he notify the owner of the land by registered letter previous to the completion of said contract that he has furnished such materials, machinery or fixtures. The owner shall be presumed to have consented to the doing of any such labor or the making of any such improvement, if at the time he has knowledge thereof, and did not give notice of his objection thereto to the person entitled to the lien. The provisions of this section and chapter shall not be construed to apply to claims or contracts for furnishing lightning rods or any of their attachments.

*In South Dakota*, (S. Dak. C. C. P. 1903 sec. 696), every mechanic, or other person who shall do any labor upon, or furnish any materials, machinery or fixtures for any building, erection, or other improvements upon land, including those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor, or subcontractor, upon complying with the provisions of this chapter, shall have for his labor done, or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner, on which the same is situated, to secure the payment of such labor done, or materials, machinery or fixtures furnished;

provided that the provisions of this section and chapter shall not be construed to apply to claims or contracts for furnishing lightning rods or any of their improvement.

*In Oklahoma*, (Okla. Comp. Laws 1909 sec. 6151), any person who, under oral or written contract with the owner of any tract or piece of land, performs labor or furnishes material for the erection, alteration or repair of any building, improvement or structure thereon; or who furnishes material or performs labor in putting up any fixtures, machinery in or attachment to, any such building, structure or improvements; or who plants any trees, vines, plants or hedge in or upon such land; or who builds, alters, repairs or furnishes labor or material for building, altering or repairing any fence or footwalk in or upon said land, or any sidewalk in any street abutting such land, has a lien upon the whole of said tract or piece of land, the buildings and appurtenances, but if a homestead the lien shall be good on not to exceed five acres in a square form on which the building material, fixtures or machinery are located, in the manner herein provided, for the amount due him for such labor, materials, fixtures or machinery.

*In Oregon*, (Oregon Laws 1910 sec. 7416), every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other person performing labor upon or furnishing material, or transporting or hauling any material of any kind to be used in the construction, alteration, or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, has a lien upon the same for the work or labor done or transportation or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or re-

pair, in whole or in part, of any building or other improvement as aforesaid, shall be held to be the agent of the owner for the purposes of this act.

*In Texas*, (Tex. Civ. Stats. Ann. 1913 art. 5621), any person or firm, lumber dealer, or corporation, artisan, laborer, mechanic, or subcontractor, who labors or furnishes material, machinery, fixtures or tools to erect any house or improvement or to repair any building or improvement whatever, or furnishes any material for the construction or repair of any railroad within this state under or by virtue of a contract with the owner or his agent, trustee, receiver, contractor or contractors, upon complying with the provisions of this chapter, has a lien on such house, building, fixtures, improvements or railroad and all its properties, and also has a lien on the lot or lots of land necessarily connected therewith, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement" as used herein, shall be construed so as to include wells, cisterns, tanks, reservoirs or artificial pools or lakes made for supplying or storing water, and all pumps, syphons, wind mills or other machinery or appliances used for raising water for stock, domestic use, or for irrigation purposes.

*In Utah*, (Utah Comp. Laws 1907 sec. 1372), mechanics, material men, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, bridge, ditch, flume, aqueduct, tunnel, fence, railroad, wagon road, or other structure or improvement upon land, and also architects, engineers, and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other like professional service, or bestowed labor in

whole or part, describing, illustrating, or superintending such structure or work done or to be done, or in any part connected therewith, have a lien upon the property upon which they have rendered service, or performed labor, or furnished materials, for the value of such service rendered, labor done, or materials furnished, by each respectively, whether at the instance of the owner or of any other person acting by his authority or under him provided, that a lien or liens shall attach only to such interest as the owner or lessee may have in the real estate.

*In Washington*, (Wash. Rem. and Bal. Code 1910 sec. 1129), every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed or material furnished by each, respectively, whether performed or furnished at the instance of the owner of the property subject to the lien or his agent; and every contractor, subcontractor, architect, builder or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter.

*In Wyoming*, (Wyo. Comp. Stats. 1910 sec. 3799), every mechanic or other person, who does or performs any work or labor upon, or furnishes any material, fixtures, engines, boilers or machinery for any building, erection or improvement upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, trustee, contractor or subcontractor, upon complying with the provisions of this chapter, has for his work, or

**624. Claim for mechanic's lien by principal contractor**  
(Wis. Stats. 1913 sec. 3320).

To the..... Court for..... County, Wisconsin:

A.... B....., of....., in the county of ..... and state of Wisconsin [by G.... H....., his attorney] makes and files this, his claim for a mechanic's lien upon the building hereinafter described, and upon all the interest of C.... D....., of....., in the county of....., state of Wisconsin, in the land herein after described upon which said building is situated, and in that behalf respectfully represents:

That the said A.... B.... is now and was at the several times hereinafter mentioned a carpenter and builder [*or otherwise state petitioner's occupation*] doing business as such in the city of....., in the county of..... and state of Wisconsin; that as such carpenter and builder\* on and between the.... day of....., 19.., and the.... day of....., 19.., at the special instance and request of said C.... D....., said A.... B.... performed and caused to be performed work and labor for, and sold and furnished lumber, lath and other building materials [*or otherwise describe the materials according to the fact*] to the said C.... D.... amounting in the aggregate to the sum of.....dollars, a true account of which work, labor and materials so furnished and sold is attached hereto marked Exhibit A.

[*Or, in case the work was done and materials furnished under an entire contract, insert at the\**]: on the....day of....., 19.., entered into a written contract with the said C.... D.... by which said A.... B.... agreed to erect a certain dwelling house for the said C.... D....., and furnish all the materials therefor [*or otherwise state purport of the contract*] in pursuance of which contract, and on and between the ....day of....., 19.., and the.... day of....., 19.., the said A.... B.... performed work and labor, &c. [*proceed as above after the \**].

labor done, or materials, fixtures, boiler or machinery furnished a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of one acre, or if such building, erection or improvements be upon any

lot of land in any town, city or village, then such lien shall be upon such building, erection or improvement and the lot or land upon which the same are situated, to secure the payment for such work or labor done, or materials, fixtures, engine, boiler or machinery furnished.



Your petitioner further represents and alleges that said work and labor were done and performed upon, and said lumber and other building materials were sold to be used and were actually used in the erection and construction [or repair] of a certain building situated and being upon that certain parcel of land described as follows, to-wit: [*insert accurate description*] of which said real estate the said C.... D.... was at the times hereinafter mentioned and still is the owner, as petitioner is informed and believes; that said premises are less than one acre [or forty acres] in area, and are [or are not] within the limits of an incorporated city; that the last date of the performance of the labor and the furnishing of the materials aforesaid was the ....day of ....., 19..; that the property affected by this claim for lien is that hereinbefore described, and that the amount claimed to be due by reason of the premises is .....dollars, with interest at.... per cent from....., 19..; that six months have not elapsed since the date of the last charge for the performing of such work and the furnishing of such materials.

WHEREFORE your petitioner prays that he may have a lien upon said building erected as aforesaid, and upon all the right, title and interest which said C.... D.... had in and to said premises upon which said building is situated, at the time said work and labor were done and performed and said materials were furnished as aforesaid, to-wit, on the ...day of ....., 19.. [*first day of performance*], or that said C.... D.... may have acquired since said time, to the amount of .....dollars as aforesaid, together with interest as aforesaid, and the costs of this claim and of enforcing the same, in accordance with the statute in such case made and provided.

Dated the....day of ....., 19.. G.... H....

Attorney for Claimant.

**625. Claim for mechanic's lien by subcontractor or laborer (Wis. Stats. 1913 secs. 3315-3320).**

To the.....Court for .....County, Wisconsin.

A.... B...., of ....., in the county of ....., state of Wisconsin, by G ... H...., his attorney, makes and files this, his claim for a lien upon the building hereinafter de-



scribed, and the interest of C.... D...., of....., county of....., Wisconsin, in the land upon which the said building is situated, as hereinafter described.

The said claim is founded upon a demand by the said claimant against L.... M...., of....., in the county of....., in said state, who was employed by said C.... D.... to perform work and labor and to furnish materials in or about the erection and construction [or repair] of a certain dwelling house owned by said C.... D.... upon the premises hereinafter described [*if the employment was by written contract allege the fact*].

The claimant alleges that he was employed as a carpenter [or mason] by the said L.... M.... and as such carpenter [or mason] the claimant performed work and labor for and furnished material to said L.... M.... in the construction of said building, as follows: that the claimant did ...days work upon said building for which work the said L.... M.... agreed to pay the sum of two dollars per day; that said work and labor was actually begun on the ...day of ....., 19.., and was concluded on the ...day of ....., 19..; that said work and labor were done and performed upon, and said materials were sold and furnished to be used and were actually used in the erection and construction [or repair] of said dwelling house, situated and being upon the following described land, to-wit: [*describe premises accurately*] that said C.... D.... is the owner of said land, and of said dwelling house situated and being thereon, as the claimant is informed and believes; that the above described land does not exceed one acre [or forty acres] in area and is [or is not] within the limits of an incorporated city or village; that the last date of the performance of labor and of furnishing materials as aforesaid by the claimant was the ...day of....., 19..; that the property affected by this claim for lien is that hereinbefore described; that the amount claimed to be due to the claimant by reason of the premises is .....dollars, together with interest from....., 19..; that six months have not elapsed since the work and labor were performed and the materials furnished by the claimant as herein above set forth, and that within sixty days from the date of the last charge for performing such work and labor and furnishing such materials, to-wit, on the... day of....., 19.., the claimant did

give notice in writing to C.... D..., the owner of the property above described to be affected by the lien herein claimed setting forth that the claimant had been employed by said L.... M.... as carpenter [or mason, or otherwise according to the fact] to perform and furnish, and that the claimant had so performed and furnished such work, labor and materials, together with a statement of the labor performed and materials furnished and the amount due therefor from said L.... M.... as herein above set forth, and that the claimant claims the lien given by chapter 143 of the Wisconsin Statutes 1913.

[Allege also the giving of the additional ten day notice now required of material men and subcontractors, see the form for that notice in force. Form 627].

WHEREFORE the claimant prays that he may have a lien upon said dwelling house, and upon all the right, title and interest which said C.... D.... had in and to said land upon which said dwelling house is situated, at the time said work and labor were done and performed and said materials were furnished as aforesaid, to-wit, on the ....day of ....., 19.., or that said C.... D.... may have acquired since said time to the amount of..... dollars as aforesaid, together with interest as aforesaid, and the costs of this claim, and of enforcing the same in accordance with the statute in such case made and provided.

Dated the.... day of ....., 19.. G.... H....  
Attorney for Claimant.

**626. Notice of subcontractor's or laborer's lien, to be given owner (Wis. Stats. 1913 sec. 3315).**

To L.... M....:

You are hereby notified that the undersigned, on and between the .... day of ....., 19.., and the .... day of....., 19.., performed work and labor [and furnished lumber and other building materials] in and upon the erection and construction of that certain dwelling house owned by you and situated upon [describe real estate] and that the undersigned was employed by C.... D...., the principal contractor [or a subcontractor] with you in the erection of said building, to perform such work and labor and furnish such materials; that the statement attached hereto and

marked Exhibit A is a true statement of the said labor performed and materials furnished, and that there is now due the undersigned from said C.... D... thereon the sum of ..... dollars, with interest from ....., 19.., for which the undersigned claims a lien upon said dwelling house and real estate pursuant to the provisions of chapter 143 of the Statutes of 1913.

A.... B....

[Date.]

[Attach itemized statement of account.]

**627. Preliminary notice by materialman or subcontractor of commencement of furnishing materials or work (Wis. Stats. 1913 sec. 3315).**

To L.... M...., [Owner.]:

YOU ARE HEREBY NOTIFIED that I have been employed by [or have contracted with] C.... D.... [*principal contractor*] to [*here state whether to furnish material or to perform labor and substantially the nature of the contract or employment and the amount expected to become due thereon*] upon your certain dwelling house now in process of erection [*or otherwise describe the building and state where situate, describing the lot*];

And you are further notified that on the .... day of ..... I delivered to the said [*name contractor*] upon said premises the first of such material [*or performed the first of such labor upon said premises*] and that I shall hold you liable for all of said material [*or labor*] so contracted to be delivered [*or performed*] and that your said property will be subject to a lien therefor in case said [*name contractor*] shall fail to pay therefor.

Dated..... 19..

A.... B....

[*This notice is in addition to the last preceding notice.*]

**628. Affidavit extending time to commence action (Wis. Stats. 1913 sec. 3318).**

[Venue.]

A.... B.... being duly sworn says that on the .... day of ....., 19.., he filed in the office of the clerk of the ..... court for ..... county, Wisconsin, his written claim for a mechanic's lien upon that certain dwelling house in the ....

of . . . . ., in said state, owned by L. . . . M. . . . , and upon all the interest of the said L. . . . M. . . . in the real estate on which said dwelling house is situated, described as follows [*insert description*]; deponent further says that no part of said claim has been paid, and that there is now due and owing to him upon said claim the sum of . . . . . dollars, with interest from . . . . ., 19.., which sum is the full amount of the interest which this deponent still has by virtue of such lien in the property herein described.

A. . . . B. . . .

[*Jurat.*]

**629. Assignment of claim for lien (Wis. Stats. 1913 sec. 3316).**

WHEREAS A. . . . B. . . . , of. . . . ., county of . . . . ., Wisconsin, on and between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., performed work and labor as carpenter [*or otherwise according to the fact*] and furnished lumber and other building materials in the erection and construction of a certain dwelling house situated upon [*describe premises*], which labor and materials were performed and furnished at the special instance and request of L. . . . M. . . . , the owner of said dwelling house and premises, and were reasonably worth the sum of . . . . . dollars, no part of which sum has been paid [*except, &c.*], and the sum of . . . . . dollars is now due thereon;

NOW, THEREFORE, in consideration of the sum of. . . . . dollars to me paid by C. . . . D. . . . , of. . . . ., county of . . . . ., Wisconsin, I, the said A. . . . B. . . . , hereby sell, assign and transfer to said C. . . . D. . . . the said account and demand, with all sums due and to grow due thereon with interest, together with the claim for a mechanic's lien upon said dwelling house and real estate founded upon said account or demand, and all rights of action to recover therefor under chapter 143 of the Statutes of 1913.

WITNESS my hand and seal this . . . . day of . . . . ., 19..

A. . . . B. . . . [Seal]

In presence of:

G. . . . H. . . .

J. . . . K. . . .

**630. Notice of assignment of lien claim (Wis. Stats. 1913 sec. 3316).**

To L.... M.... [Owner]:

TAKE NOTICE that A.... B...., of ....., county of ....., has duly assigned to the undersigned his claim for lien upon that certain dwelling house owned by you and situated upon [*describe premises*] and all rights of action therefor. Take notice also that attached hereto, marked Exhibit A, is a true copy of the assignment of said claim, and that the amount now due the undersigned upon said claim is the sum of ..... dollars, with interest from ....., 19.. C.... D....

[Date.]

[Attach copy of assignment and serve on owner.]

**631. Petition for log lien (Wis. Stats. 1913 sec. 3330).**

To the..... Court, for ..... County, Wisconsin.

THE PETITION of A.... B...., of ....., county or ....., state of Wisconsin, respectfully shows that between the .... day of ....., 19.., and the .... day of ....., 19.., the petitioner performed work, labor and services for and at the request of C.... D...., of ....., county of ....., state of Wisconsin, in and about the cutting, falling, skidding, hauling, scaling, driving, running, rafting, booming, cribbing and towing about... thousand pine saw logs [*or other timber*] marked as follows [*give marks*];

That such work, labor and services were done and performed on section No. ...., township No.... of range.... in the county of ..... and state of Wisconsin, between the .... day of ....., 19.., and the .... day of ....., 19.., and the same were completed on the .... day of ....., 19..;

That the sum of ..... dollars became due and payable to this petitioner from the said C.... D.... on account of the said labor on the .... day of ....., 19.., but that no part thereof has been paid; and the petitioner therefore claims a lien upon the aforesaid pine logs [*or other timber*] pursuant to law for the aforesaid sum so due and unpaid to him, with interest thereon from the .... day of ....., 19.., and costs. A.... B....



[*Venue.*]

A.... B.... being duly sworn says that he has read the above and foregoing petition by him signed, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A.... B....

[*Jurat.*]

**632. Notice to reputed owner of furnishing materials or labor (Cal. C. C. P. 1906, sec. 1184).**

To C.... D....

YOU ARE HEREBY NOTIFIED that the undersigned has performed labor [*or, furnished materials, or both, as the case may be, or has agreed to furnish labor and materials*] for E.... F...., your contractor, in the construction and repair of that certain building or improvement [*or other structure, according to the fact*] situated upon the following described premises [*insert description*].

You are further notified that the following is a statement in general terms of the kind of labor and materials so furnished or agreed to be furnished, to-wit: [*Here insert detailed statement of the materials giving dates on which the same were furnished, if they have been already furnished*].

The amount and value of the labor and materials already furnished as near as may be is ..... dollars, and the amount and value of the whole labor and materials agreed to be furnished is .....dollars.

You are further hereby notified to withhold from said contractor sufficient money to answer the foregoing claim and any mechanic's lien that may be filed therefor under the provisions of the Code of Civil Procedure of California, including counsel fees and costs.

Dated this .... day of ....., 19.. A.... B....

**633. Notice of non responsibility of owner of building (Cal. C. C. P. 1906 sec. 1192, as amended by chapter 303, statutes of 1907).**

To Whom It May Concern:

WHEREAS I, the undersigned, am the owner of [*or have an interest in*] the following described parcel of land [*here de-*

*scribe land*], and whereas I have within the last three days obtained knowledge that the following construction, alteration or repair has been made or commenced to be made upon said premises [*or in case the same has not yet been commenced, is intended to be made upon said premises*] [*here describe the alteration or construction*]; you are hereby notified that the said construction [*or alteration or repair*] is being done [*or is about to be done*] without my consent or instance and that I will not be responsible for the same or any part thereof.

Dated....., 19..

A.... B....

**634. Owner's notice of completion of building or cessation from work (Cal. C. C. P. 1906, sec. 1187).**

NOTICE is hereby given by the undersigned owner of the property hereinafter described that the building [*or structure, or other improvements, describing the same*], situated on the parcel of land hereinafter described, the contract for which was let to E.... F.... on the ...day of....., 19.., and duly recorded in the recorder's office in the city of....., county of....., state of California, on the ...day of....., 19.., was actually completed on the ...day of....., 19.., and accepted by me on said day.

[*Or in case of a cessation from labor for thirty days upon the work, insert in place of the above: NOTICE is hereby given by the undersigned owner of the premises hereinafter described that there has been a cessation from labor upon that certain contract entered into between the undersigned and E.... F...., filed in the recorder's office for the city of....., county of....., state of California, on the ...day of....., 19.., and upon the building, or otherwise describe the improvement according to the fact, in process of erection under said contract for thirty days, and that the date on which said cessation actually occurred was the ...day of....., 19..*]

That the name of the person who caused the said building to be erected [*or said alteration or repair to be made*] is A.... B....; that the said A.... B.... is and was the owner in fee simple of the said property and that the following is the description thereof: [*insert description*].

Dated....., 19..

A.... B....

635. Claim for lien by original contractor (Cal. C. C. P. 1906, sec. 1187).

A.... B.... vs. L.... M....	}
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To Whom It May Concern:

NOTICE is hereby given that I, A.... B...., in the city of....., county of....., state of California, have performed labor and furnished materials in the construction [or alteration or repair] of that certain building or improvement or structure upon that certain parcel of land situated in the city of....., county of....., state of California, more particularly described as follows: [here insert description].

Notice is further hereby given that L.... M.... is the name of the owner [or reputed owner] of said premises and caused the said building to be constructed [or altered or repaired, as the case may be], and that the name of the person by whom the undersigned was employed and to whom said materials were furnished is L.... M....

That on the....day of....., 19.., I entered into a contract with the said L.... M.... for the construction [or alteration, as the case may be] of said building and that the following is a statement of the terms, time given and conditions of the said contract, to-wit [here insert fully terms and conditions of the contract, and if the same is in writing insert the exact language].

Notice is further hereby given that said contract has been fully performed on my part and that the construction [or alteration] of said building was completed on the....day of....., 19.., and that ....days have not elapsed since the same was completed.

That the following is a statement of my demand, after deducting all just credits and offsets [here insert full statement, showing the contract price, the amount paid thereof and the balance due; it is well to give the details of debit and credit and the exact date of the first and last items].

WHEREFORE I claim a lien upon said premises and the improvements thereon, pursuant to the statutes of the state of California.

A.... B....

[*Venue.*]

A.... B...., being duly sworn, deposes and says that he is the claimant named in the foregoing claim for a lien; that he has read the same and knows the contents thereof and that the same is true of his own knowledge, and further that the statement therein contained is a correct statement of this claimant's demand after deducting all just credits and offsets.

A.... B....

[*Jurat.*]

636. The same, by a material man (Cal. C. C. P. 1906 sec. 1187).

A.... B....	}
vs.	
L.... M....	

To Whom It May Concern:

NOTICE is hereby given that I, A.... B...., of....., city of.....county, state of California, have furnished materials [*or performed labor*] as hereinafter set forth, in the construction [*or alteration, as the case may be*] of that certain building [*or otherwise state the improvement according to the fact*] upon that certain parcel of land situated in the said city and county, described as follows: [*insert description*].

That L.... M.... is the name of the owner [*or reputed owner*] of the said premises and caused said building to be constructed and that the name of the person to whom I furnished said materials [*or by whom I was employed*] is G.... H.... [*name of contractor*].

That said materials were so furnished [*or said labor was performed*] between the....day of....., 19.., and that the same was furnished at the instance and request of the said G.... H...., and actually used in the construction of the said building, and that the following is a statement of the terms, time given and conditions of my contract therefor with the said G.... H...., to-wit: [*insert concise statement of the contract, as for instance*]: Between the....day of....., 19.., and the....day of....., 19.., I sold and delivered to the said G.... H...., certain material, to-wit: [*describing same*] at the agreed price of.....dollars, and

the said G.... H.... agreed to pay therefor upon the completion of the said building.

The said contract has been fully performed on my part and the construction of the said building was completed on the ....day of....., 19.., and notice thereof was on said last named date filed with the recorder of the said city and county by said owner and that....days have not elapsed since the said completion and the filing of notice thereof.

That the following is a statement of my demand after deducting all just credits and offsets [*insert full statement of account, with the debits and credits, showing the balance still unpaid*].

WHEREFORE I claim a lien upon said premises and the improvements thereon, pursuant to the statutes of the State of California.

A.... B....

[*Verification as in Form 635.*]

**637. Miner's claim for lien (Cal. C. C. P. 1906 sec. 1187).**

A.... B....

vs.

C.... D.... Co.

To Whom It May Concern:

NOTICE is hereby given that I, A.... B...., of....., have performed labor as a miner as hereinafter stated in a certain mining claim called the.....claim, situated in the .....mining district, in the county of....., state of California, more particularly described as follows: [*here insert description of claim according to the deed of the claim recorded in the office of the recorder of the county.*]

That the C.... D.... Co., a corporation, is the name of the owner [*or reputed owner*] of said mining claim; that L.... M.... is the name of the person by whom I was employed to perform the labor hereinafter mentioned and who had charge of the mining in said claim by authority of the said owner, and that the following is a statement of the terms, time given and conditions of the contract under which said labor was performed, to-wit: The said C.... D.... Company agreed to pay me.....dollars per day for my



labor as a miner in said claim, payable upon demand [*in case of any other provisions insert them in full*].

That under said agreement I performed labor in said claim, beginning on the . . . day of . . . . ., 19 . . ., and ending on the . . . day of . . . . ., 19 . . ., inclusive, and amounting to . . . . . days in all. That . . . days have not expired since the performance by me of said labor. That the following is a statement of my demand after deducting all just credits and offsets: The total amount of credits under said agreement was . . . . . dollars, and there has been paid on account thereof the sum of . . . . . dollars, leaving a balance amounting to the sum of . . . . . dollars, which still remains due and unpaid over and above all just credits and offsets.

WHEREFORE I claim a lien for my said demand of . . . . . dollars upon said premises and the improvements thereon, pursuant to the statutes of the state of California.

A . . . . B . . . .

[*Verification as in Form 635.*]

638. The same for grading lot (Cal. C. C. P. 1906 sec. 1191).

A . . . . B . . . .

vs.

G . . . . H . . . .

To Whom It May Concern:

NOTICE is hereby given that I, A . . . . B . . . ., of the city of . . . . ., county of . . . . ., state of California, have performed labor and furnished materials in grading the lot hereinafter described in the incorporated city of . . . . ., county of . . . . ., state of California, which said lot is more particularly described as follows: [*insert description*].

That G . . . . H . . . . is the name of the owner of said lot and that said G . . . . H . . . . is the person who caused the lot to be graded and improved and is the person by whom I was employed and to whom I furnished and delivered materials and for whom I performed labor as herein stated.

That said labor was performed and materials furnished at the request of said G . . . . H . . . . between . . . . ., 19 . . ., and . . . . ., 19 . . ., and that the following is a statement of

the terms, time given and conditions of the said contract, to-wit: [*Set forth conditions of the contract.*]

That said contract has been fully performed; that the grading was fully completed on the....day of....., 19.., and that.... days have not elapsed since the completion thereof and since the sum due me became due and payable.

That the following is a statement of my demand after deducting all just credits and offsets: [*insert statement.*]

WHEREFORE I claim a lien for my said demand upon said premises and the improvements thereon, pursuant to the statutes of the state of California.

A.... B....

[*Verification as in Form 635.*]

**639. Owner's notice to contractor to defend lien suit**  
(Cal. C. C. P. 1906 sec. 1193).

TO G.... H....

TAKE NOTICE that an action has been commenced against the undersigned in the.....court in the state of California in and for the county of.....by A.... B...., plaintiff, to enforce a lien upon the property and building which you have, under a contract between us, been constructing for me, situated on.....street in said city and county, for materials furnished and labor performed by him for you in the constructuin of said building, to the amount of .....dollars.

You are further notified to defend said action at your own expense and that I will withhold further payments to become due you under said contract during the pendency of said action, and in case of judgment against me therein will deduct the amount of said judgment from any sum due or to become due you under said contract.

Dated....., 19..

L.... M....

**640. Claim for lien against two contiguous buildings**  
owned by the same person (Cal. C. C. P. 1906,  
sec. 1188).

A.... B....

vs.

G.... H....

## To Whom It May Concern:

NOTICE is hereby given that I, A.... B...., of ....., have performed labor, etc. and furnished materials in the construction of those certain buildings situated upon those certain lots of land described as follows, to-wit: [*insert description of each piece separately.*]

[*Insert statement as to the ownership of the premises, the person to whom the materials were furnished and the details of the contract made as in Form 635, making the statements applicable to both buildings*]; that the following is a statement of my demand after deducting all just credits and offsets, to-wit: [*here insert statement showing the total amount furnished on each building and the amount paid on each and the balance due on each, and also the sum total due and unpaid upon the two buildings over and above all just credits and offsets*].

Wherefore I claim a claim upon said property and the improvements thereon, pursuant to the statutes of the state of California.

A.... B....

[*Verification as in Form 635.*]

**641. Statutory notice and claim for lien (Ariz. R. S. 1913 sec. 3641).**

A.... B....

vs.

C.... D.... [*or C....*

D.... and G.... H....,

*if the work or material was furnished by a contractor or subcontractor, G.... H....]*

STATE OF ARIZONA,

County of.....

} ss.

A.... B...., being first duly sworn, deposes and says:

I. That he has performed labor and furnished materials [*or either as the case may be*] in the construction [*or alteration, addition to, repairs, etc., as the case may be, or other words showing the claim is within the statute*] of that certain building,

improvement or structure [*or words showing the object to be within the statute*] now upon that certain lot or parcel of land [*or mining claim*] situate in the county of....., state of Arizona, [*or in the city of....., county of....., state of Arizona*] and sought to be charged, together with said improvements [*or state object*], with the lien claimed hereby, and more particularly described as follows, to-wit: [*here insert description sufficient for identification.*]

II. That C.... D.... is the name of the owner [*or reputed owner*] of said premises and caused said building [*structure or improvement, or state object*] to be constructed [*or altered or repaired, or state nature of labor*].

III. That the name of the person by whom he was employed was C.... D.... [*if labor was done for or material furnished for a contractor or subcontractor state, that the name of the person by whom he was employed was G.... H...., who was a contractor, or subcontractor of C.... D....*]

IV. That on the....day of....., 19.., he entered into a contract with said C.... D.... [*or G.... H.... as the case may be*] for the construction [*or alteration, etc., as the case may be, or for the furnishing of material for the construction, etc., stating the facts*] of said building [*or state object*], which contract was in writing and in the words and figures following: [*insert copy of contract or if same was oral, state which contract was oral and the following is a statement of the terms, time given and conditions thereof:*] [*state the terms, etc.*]

V. That the said contract has been duly performed by him, and the construction [*alteration, etc., stating the fact*] of said building [*or state object*] was completed on the...day of....., 19.., and ninety days [*or sixty days if the lienor is not the original contractor*] have not elapsed since the said date.

VI. That the following is a statement of his demand under said contract after deducting all just credits and offsets: [*here insert contract price, the amount paid thereon and the balance due and unpaid, after deducting all just credits and offsets.*] [*If services or materials were furnished a contractor or subcontractor, insert that the said services or materials, furnished under said contract, were reasonably worth the sum of.....dollars, stating the amount.*]

VII. That he, the said affiant, claims a lien upon the above described property, structures and improvements and the benefits of the laws of the state of Arizona relating to liens of mechanics, materialmen, laborers and others, for the sum due him under the above account, and for the purpose of fixing said lien has made this notice and claim of lien in duplicate and delivers one copy thereof to the county recorder of the county of . . . . ., state of Arizona, to be filed and recorded as required by law and causes the other of said duplicate copies to be delivered to C. . . . D. . . . or his lawful agent. [Or if C. . . . D. . . . is absent from the county and has no agent therein, state: and holds the other of said duplicate copies to be delivered to C. . . . D. . . . or his agent, if they or either of them shall come within the county of . . . . . and demand said duplicate copy.]

A. . . . B. . . .

[*Jurat.*]

**642. Claim for mechanic's lien (Ark. Dig. of Stats. 1904 sec. 4981).**

Circuit Court. . . . .County.

In the matter of the claim of A. . . . B. . . . for a mechan- ic's lien.
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Now comes A. . . . B. . . ., of . . . . ., wishing to avail himself of the benefit of the statute concerning mechanics liens, and files the account hereinafter set forth for work and labor done and materials furnished by him under contract with C. . . . D. . . . upon and for those certain buildings and improvements described as follows, to-wit: [*describe same*], situated on the following described premises to-wit [*describe premises*] both the said buildings and improvements and the said premises being owned by the said C. . . . D. . . . . The said account which is hereby filed in order that it may constitute a lien upon the said buildings, improvements and premises is as follows: [*set forth account in full*].

[*Date.*]

A. . . . B. . . .

[*Venue.*]



A.... B...., being duly sworn, says that the foregoing is a just and true account of the demand due him for work and labor done, and materials furnished by him upon, and for the buildings and improvements described in the foregoing account after allowing all credits thereon; that said work and labor were done, and said materials furnished upon, and for said buildings and improvements by him at the instance and request of, and under contract with C.... D...., that the foregoing description is a true description of the property upon, and for which said materials were furnished, and said work and labor done, and to which this lien is intended to apply, and that said demand accrued within ninety days prior to the filing of this lien.

[*Jurat.*]

A.... B....

**643. Subcontractor's notice to owner (Ark. Dig. of Stats. 1904 sec. 4976).**

TO L.... M....,

Owner of the premises hereinafter described.

TAKE NOTICE that I, A.... B...., of....., hold a claim against those certain buildings and improvements consisting of [*name and describe the same*] situated upon [*describe the real estate*] for work and labor performed and materials furnished by me in and about the construction of said buildings and improvements on and between the...day of ....., 19.., and the...day of....., 19.., and that the amount of said claim is.....dollars. That said sum is now due this claimant from C.... D.... [*name of principal contractor*] and that in case said claim be not paid I shall avail my self of the statute on mechanics liens.

[*Date.*]

A.... B....

**644. Claim for mechanic's lien (Colo. Code Ann. 1911 sec. 4033).**

[*The forms heretofore given in this chapter for use in California may with slight changes be used in Colorado.*]

**645. Claim for mechanic's lien (Idaho Rev. Code 1908 sec. 5115).**

[*The forms heretofore given in this chapter for use in California may with slight changes be used in Idaho.*]

**646. Statement of account for mechanic's lien (Iowa Ann. Code 1897 sec. 3092).**

[Draw itemized statement of the account in form of debits and credits, with dates and description of labor or materials furnished and balance due, and attach the following affidavit]:

A.... B.... being duly sworn says that the above and foregoing account is a just and true account of the labor performed and materials furnished by him in the erection, construction and repair of that certain dwelling house in the city of....., state of Iowa, situated upon the premises hereinafter described, as well as of all payments made upon said account, and that the balance justly due and owing him thereon, after allowing all credits, is the sum of.....dollars, with interest from....., 19..; deponent further says that said labor was performed and said materials furnished pursuant to and by virtue of the terms of a certain contract [in writing] which this deponent entered into on the...day of....., 19.., with one L.... M...., by the terms of which deponent agreed to perform all the labor and furnish all the materials [*or otherwise, as contract was*] in and about the erection and construction of a certain dwelling [*or other building, describing it*] situated upon [*describing premises*] of which said premises the said L.... M.... was then and is now the owner in fee [*or other interest*]; that said labor was performed and said materials furnished at the times stated in said account, and between and including the...day of....., 19.. [*first date*], and the...day of....., 19.. [*last date*], at which time the said contract was fully completed and that the various amounts charged in said account for said labor and materials are the true and correct amounts justly due and owing therefor pursuant to the terms of said contract, and that no payments have been made upon said account or contract other than those credited in said account. Deponent further says that for the balance due upon said account, to-wit, the sum of.....dollars, with interest, as aforesaid, he claims a mechanic's lien upon said building [*or other improvement, describing it*] and upon the land above described whereon the same is situated.

A.... B....

[*Jurat.*]

**647. Notice of subcontractor's lien (Iowa Ann. Code 1897 sec. 3093).**

To L.... M.... [Owner].

TAKE NOTICE that on the....day of....., 19.., the undersigned filed with the clerk of the district court for the county of....., Iowa, a verified and correct statement or account of the demand due me, after allowing all credits, for materials furnished and labor performed by me in and about the erection and construction [or repair] of that certain dwelling house [or other building, describing it] situated on the following described real estate [describing it] which statement contained a correct description of the property sought to be charged with a mechanic's lien as above described, and the time when said materials were furnished and said labor was performed, and claimed a mechanic's lien upon said building and lands for.....dollars, and interest from....., 19.., being the balance justly due me thereon.

[Date.]

A.... B....

**648. Bond to discharge subcontractor's lien (Iowa Ann. Code 1897 sec. 3093).**

KNOW ALL MEN by these presents that we, L.... M...., principal, and G.... H.... and J.... K...., sureties, all of.....county, Iowa, parties of the first part, are held and firmly bound to A.... B...., of.....county, Iowa, party of the second part, in the penal sum of..... dollars, lawful money of the United States, well and truly to be paid.

THE CONDITION of this obligation is such that, whereas the said A.... B.... on the ....day of....., 19.., filed in the office of the clerk of the district court of..... county, Iowa, a written verified statement or account of the demand due and owing him from C.... D.... [principal contractor], and claiming a mechanic's lien therefor on the following real estate [describe the building and land as in the claim];

NOW, if the said party of the first part shall and will pay to said second party, his heirs, assigns, or administrators, any sum of money for which said second party may obtain judgment upon the demand for which said statement or

account has been filed, then this obligation to be void; otherwise it is to be and remain in full force and virtue.

WITNESS our hands this . . . day of . . . . ., 19..

L. . . . M. . . .

G. . . . H. . . .

J. . . . K. . . .

[Add qualification of sureties and approval by clerk.]

**649. Claim for mechanic's lien by original contractor**  
(**Kans. Gen. Stats. 1909 sec. 6245**).

To Whom It May Concern:

THE UNDERSIGNED A. . . . B. . . ., having under a contract with the owner [or with the trustee, or agent of the owner] hereinafter named, of the parcel of land hereinafter described, furnished certain materials for and performed certain labor in and about the erection [or alteration or repair] of a certain building, to-wit: [*describe same*] on said land, and the sum hereinafter set forth being due under said contract for said materials furnished and labor performed and still remaining unpaid, the undersigned hereby claims a lien, as provided by law, upon the whole of said parcel of land together with the buildings thereon for the said sum, with interest thereon from the . . . day of . . . . ., 19.., and to that end makes and files the following statement of his said claim, to-wit:

The amount claimed is . . . . . dollars.

The name of the owner of said land is C. . . . D. . . .

The name of the contractor is A. . . . B. . . .

The name of the claimant is A. . . . B. . . .

The date upon which said materials were last furnished under said contract was the . . . day of . . . . ., 19..\*

The items of said materials furnished and labor performed, as nearly as practicable, are set forth in the exhibit hereto attached, and marked Exhibit "A."\*\*

The description of the said property, subject to said lien, is as follows, to-wit: [*describe property*].

[Date.]

A. . . . B. . . .

[Venue.]

A. . . . B. . . ., being first duly sworn, says that he is the

claimant in the foregoing statement for a mechanic's lien and that said statement is true.

A.... B....

[*Jurat.*]

**650. The same where note has been taken (Kansas).**

[*Proceed as in last preceding form inserting, however, between \* and\*\* the following*]:

That on the....day of....., 19.., the said C.... D.... in evidence of his said indebtedness to this claimant for the said materials furnished and labor performed executed and delivered to this claimant his certain promissory note, a copy of which note with all endorsements thereon is attached hereto and marked Exhibit "A," and that no payments have been make upon said note except such as appear upon the back thereof.

**651. The same by subcontractor (Kans. Gen. Stats. 1909 sec. 6246).**

To Whom It May Concern:

THE UNDERSIGNED having under a sub-contract with the contractor hereinafter named, furnished certain materials for, and performed certain labor in, the erection [*or alteration or repair*] of a certain building, to-wit, a [*describe same*] which the said contractor, under a contract with the.....owner, hereinafter named, of the parcel of land hereinafter described, was then engaged in erecting [*or altering or repairing*] on said land; and the sum hereinafter set forth being due under said sub-contract for said material and labor, and still remaining unpaid, the undersigned hereby claims a lien, as provided by law, etc. [*proceed substantially as in Form 649 from this point*].

**652. The same by laborer (Kans. Gen. Stats. 1909 sec. 6246).**

To Whom It May Concern:

THE UNDERSIGNED having as a laborer to-wit, a carpenter [*or stonemason*] in the employ of A.... B...., the contractor hereinafter named, performed certain labor as such carpenter [*or stonemason*] in the erection [*or repair*] of a certain building, to-wit, a [*describe same*] which the said con-



tractor, under a contract with the.....owner hereinafter named of the parcel of land hereinafter described was then engaged in erecting [*or altering or repairing*] on said land, and the sum hereinafter set forth being due for said labor and still remaining unpaid the undersigned hereby claims a lien as provided by law, etc. [*proceed substantially as in Form 649 from this point*].

**653. Subcontractor's notice of filing lien (Kans. Gen. Stats. 1909 sec. 6246).**

To C.... D....

YOU ARE HEREBY NOTIFIED, That on the...day of...., 19.., the undersigned, as sub-contractor, duly filed in the office of the clerk of the district court of.....county, in the state of Kansas, a statement for a mechanic's lien, of which a true copy is hereto attached.

A.... B....

Claimant.

[*Preserve a copy of the notice and endorse an affidavit of service thereof on the back.*]

**654. Indemnity bond against mechanic's liens (Kans. Gen. Stats. 1909 sec. 6255).**

KNOW ALL MEN by these presents, that we, the undersigned, are jointly and severally held and firmly bound unto the state of Kansas, for the use of all persons in whose favor liens might accrue by virtue of the provisions of the general statutes of the state of Kansas, by reason of the furnishing of materials or labor in and about the erection [*or repair*] of a certain dwelling house on the following-described lands, in said county, namely: [*describe lands*], in the sum of ..... dollars.

THE CONDITION of this obligation is such that if C.... D...., the owner of said premises, [*or A.... B...., the contractor for the erection of the said dwelling house,*] shall make payment of all claims arising from the furnishing of material or the performance of labor for the purpose hereinbefore recited, which might be the basis of liens, under the provisions of the general statutes of the state of Kansas,

then the above obligation to be void; otherwise it shall remain in full force and effect.

G.... H....

J.... K....

[*Venue.*]

G.... H.... and J.... K...., being duly sworn each for himself says that he is a resident of ..... county in the state of Kansas and is worth the sum of ..... dollars over and above all exemptions, debts and liabilities.

G.... H....

J.... K....

[*Jurat.*]

Taken and approved by me, this .... day of .....,  
A. D. 19..

L.... M....

Clerk of the District Court.

### 655. Claim for mechanic's lien on personal property (Kans. Gen. Stats. 1909 sec. 4808).

To Whom it May Concern:

The owner hereinafter mentioned, having intrusted to the undersigned mechanic, [*or artisan, or tradesman,*] the article of personal property hereinafter described, to be altered and repaired, and the undersigned having altered and repaired the same, and on the completion of said alterations and repairs, at the request of the owner hereinafter mentioned, permitted the same to be taken away without the fair, reasonable and stipulated charges having been paid, hereby claims a lien, as provided by law, upon said article of value, for said charges, with interest thereon from the .... day of ....., 19.., and to that end makes and files the following statement, to-wit:

The name of the owner of the property is C.... D....

The name of the mechanic, [*or artisan, or tradesman,*] is  
A.... B....

The name and description of the article is [*name and describe same*].

The date of the charges for the same is ....., 19.. and the amount due the undersigned is ..... dollars.

[*Date.*]

A.... B....

**656. Claim for mechanic's lien (Minn. Gen. Stats. 1913 sec. 7026).**

A.... B.... of ..... makes this statement of claim for mechanic's lien and alleges;

*First.* That notice is hereby given that he [or if he be agent for another C.... D.... of .....] claims, and intends to hold, a lien upon the real estate and premises hereinafter described, for the payment of the sum of ..... dollars.

*Second.* That said amount is 'due and owing to said A.... B.... [or C.... D.... as the case may be] for labor performed [or materials furnished or machinery furnished or as the case may be] upon and for the following described improvement of and upon said real estate, to-wit: [describe the improvement.]

*Third.* That the name of the claimant of said lien is A.... B.... [or C.... D.... as the case may be] and that the name of the person to and for whom said labor was performed [or materials furnished as the case may be] is [here name the owner if the contract was made with him or if not then name the agent, trustee, contractor or subcontractor as the case may be with whom the contract was made and state his authority to contract the liability] and that said labor was so performed [or the said materials were so furnished] with the knowledge, and at the instance, of the then owner of said real estate and premises.

*Fourth.* That the first item of said labor was performed [or material was furnished] on the .... day of ....., 19.., and the last item thereof on the .... day of ....., 19..

*Fifth.* That the description of said real estate and premises upon which said improvement was made, and which is to be charged with said lien, is as follows, to-wit: [describe same].

*Sixth.* That the name of the owner of said real estate and premises, at the date hereof, according to the best information he has is G.... H.....

A.... B....

[Venue.]

A.... B.... being duly sworn, on oath says, that he is the person who made and signed the foregoing statement; that he is the claimant above named [or the agent of the claimant above named] and has personal knowledge of the

facts set forth in said statement; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A.... B....

[*Jurat.*]

**657. Notice of subcontractor's lien (Minn. Gen. Stats. 1913 sec. 7025).**

To L.... M.... [Owner].

You are hereby notified that I have been employed by [or, have contracted with] C.... D.... [*principal contractor*] to [*here state whether to perform labor or furnish skill, material, or machinery, or both, and substantially the nature of the undertaking or demand*] upon your [*here state the building or other structure or improvement, and where situate, in general terms*], and that I shall hold the building [*or other structure, describing it as the case may be*] and your interest in the land liable for the amount that is [*or may become*] due me on account thereof. That said amount is [*or will be*] ..... dollars [*state the amount as nearly as may be*].

[*Date.*]

A.... B....

**658. Claim for lien (Mo. R. S. 1909 sec. 8217).**

Now comes A.... B.... seeking to obtain the benefit of the statute on mechanics liens and files the account hereinafter set forth for materials furnished and work and labor performed by him in and upon certain buildings and improvements described as follows [*describe the building or other improvement*] situated upon the following described parcel of land, to-wit: [*describe land*] the said land, buildings and improvements being owned by C.... D....; which said account so filed is in words and figures as follows [*here transcribe account in full*] [*or if the account be voluminous insert instead of the last allegation, which said account so filed is attached hereto made part hereof and marked Exhibit A*].

The said A.... B.... further states that the said account is a just and true account of his aforesaid demand after all just credits have been given, that the work, labor and materials therein set forth were performed and furnished

under and by virtue of a contract between the claimant and said C.... D.... [or if the work was done or materials furnished to a principal contractor allege instead that the same, were furnished at the instance and request of G.... H.... who erected the said building for the said C.... D... under the terms of a contract for the erection of the same theretofore entered into between the said C.... D.... and the said G.... H....]; that the foregoing description is a true description of the property upon which said lien is claimed, or so near as to identify the same; that said demand accrued within .... months, prior to the filing of this lien; that C.... D.... is the owner of said premises and improvements as affiant is informed and believes; [add, if claimant is a subcontractor], and that on the .... day of ....., 19... this claimant gave written notice to said C.... D.... that he holds the said claim against said building or improvement, setting forth the amount thereof and from whom the same is due and his intention to file a lien therefore.

[Date.]

A.... B....

[Venue.]

A.... B.... being duly sworn says that he is the claimant above named and that the foregoing is a just and true account of his said demand, that the statements of fact therein contained are true to his own knowledge, except as to those statements therein contained which are alleged to be upon information and belief, and as to those matters he believes it to be true.

A.... B....

[Jurat.]

**659. Claim for lien (Mont. Rev. Codes 1907 sec. 7291).**

[The forms heretofore given in this chapter for use in California may be used in Montana; it will be unnecessary, however, to insert a statement of the "terms, time given and conditions of the contract," as this is not required in Montana.]

**660. Claim for mechanic's lien (Neb. R. S. 1913 sec. 3825).**

[Attach at the foot of an itemized copy of the account the following affidavit]:



[*Venue.*]

A.... B.... being first duly sworn, says that the foregoing itemized account of labor, skill, machinery and materials, is a true and correct account of the labor and skill performed, and of the machinery and materials furnished by the affiant for the said C.... D...., under a written contract, a copy of which is attached hereto marked Exhibit A, [*if there was no written contract omit the last preceding clause*], for, in and about the erection, [*or improvement, or reparation or removal*] of a certain dwelling house [*or otherwise describe the building according to the fact*] on the following described parcel of land, viz.: [*here describe the land*].

And this affiant further says that he has and hereby claims a lien on the said premises for the full amount of said account, to-wit: the sum of ..... dollars, together with interest thereon at the rate of .... per cent per annum, from the .... day of ....., A. D. 19..

A.... B....

[*Jurat.*]

**661. The same, another form (Neb. R. S. 1913 sec. 3825).**

[*Venue.*]

A.... B.... being first duly sworn, says: That the account hereto annexed marked Exhibit A is a full, true and correct itemized account of the labor performed and materials furnished by him to and for one C.... D.... [*insert name of owner or the principal contractor, if petitioner was a subcontractor*], in said county, and that the prices thereof set forth in said account are just and reasonable, and in accordance with the contract hereinafter mentioned, and that there remains due and unpaid thereon the sum of ..... dollars, over and above all credits.

That said labor was performed and said materials were furnished under and by virtue of a written contract between the said A.... B.... and the said C.... D.... [*name of owner or principal contractor*], a copy of which contract is hereto annexed, marked Exhibit B [*a copy must be attached if the contract was written*].

That said labor was performed and said materials were furnished for the purpose of erecting a certain dwelling house [*or otherwise describe improvement*] standing on the land here-

inafter described [*insert if the claimant is a subcontractor*] and that the said C.... D.... was the principal contractor for the erection of said building with one L.... M...., who was and is the owner thereof.

That the said L.... M.... was, at the time said contract was entered into and said labor was performed and said materials were furnished, the owner of said land upon which said building is situated, which land is described as follows [*insert description*].

That the first item of said labor was performed and materials were furnished on the .... day of ....., 19.., and the last on the .... day of ....., 19..

And deponent further says that he, the said A.... B...., is the legal owner of the above mentioned account, and that he claims a lien on the premises for the full amount thereof to-wit, the sum of ..... dollars, with interest thereon at the rate of .... per cent per annum from the .... day of ....., 19..

A.... B....

[*Jurat.*]

[*Attach itemized account.*]

**662. Claim for mechanic's lien (N. Dak. Rev. Codes 1905 sec. 6240 S. Dak. C. C. P. 1908 secs. 697, 703).**

[*Venue.*]

A.... B.... being duly sworn says that he is a carpenter [*or, stone mason, or otherwise according to the fact*] and that between and including the .... day of ....., 19.., and the .... day of ....., 19.., at the special instance and request of one C.... D...., of ....., county of ....., state of ....., [*or pursuant to the terms of a written contract theretofore made by deponent with one C.... D...., of, etc.*], the said A.... B.... performed labor upon and furnished materials for the erection and construction of a certain dwelling house for the said C.... D.... situated upon the following described land [*describe premises*] as particularly set forth in the annexed account, marked Exhibit A, at the respective dates, and at and for the respective prices specified in said account; that said account is a just, true and full statement of the labor performed and the materials so furnished to said C.... D.... in and about the

erection of said dwelling house [under said contract], and that the prices so charged in said account are the reasonable value of said labor actually performed and said materials actually used in the erection of the building aforesaid, and that there is due and owing thereon to deponent, after allowing all credits, the sum of . . . . . dollars, for which a mechanic's lien is hereby claimed in favor of the said A. . . . B. . . . upon the said dwelling house and upon the said land upon which the same is situated, which land was then and is now owned by the said C. . . . D. . . .

A. . . . B. . . .

[*Jurat.*][*Attach itemized account.*]**663. The same, another form (North and South Dakota).**[*Venue.*]

A. . . . B. . . . being duly sworn says that he is a carpenter and builder and that on the . . . . day of . . . . ., 19. . . , he made a contract with C. . . . D. . . . to erect and furnish all materials for the erection of a certain dwelling house situated upon the following described land, of which the said C. . . . D. . . . was and now is the owner to-wit [*describe land*].

That in pursuance of the terms of said contract this affiant performed labor and furnished material for the erection of said dwelling house as specified in the annexed account at the dates and for the prices specified therein; that said account is a just, true and full statement of the labor and material so furnished and that there is due and owing thereon to this affiant after allowing all credits, the sum of . . . . . dollars, for which a mechanic's lien is hereby claimed in favor of the said A. . . . B. . . . upon said dwelling house and the land upon which the same is situated, under the statutes of this state.

A. . . . B. . . .

[*Jurat.*][*Attach itemized account.*]**664. Notice of lien by subcontractor to owner (N. Dak. Rev. Codes 1905 sec. 6237).**

To C. . . . D. . . . [Owner].

Dear Sir:

You are hereby notified that the undersigned, of . . . . .,

county of . . . . ., state of North Dakota, on and between the . . . . day of . . . . ., 19.., pursuant to contract with [or at the special request of] one L.... M.... [*principal contractor*], performed labor as subcontractor, and furnished material for the erection of that certain dwelling house owned by you and situated upon [*describe premises*] which labor and materials amounted to and were of the reasonable value of . . . . . dollars, as fully set forth in the account attached hereto and marked Exhibit A, no part of which sum has been paid [*except, etc.*] And you are further notified that the undersigned will claim a mechanic's lien upon said dwelling house and land for the said sum.

Yours, etc.,

A.... B....

[*This notice is to be given by registered mail.*]

**665. Statement by subcontractor (S. Dak. C. C. P. 1908 sec. 699).**

**SUBCONTRACTOR'S STATEMENT**

A.... B...., of . . . . ., county of . . . . ., state of South Dakota, hereby states and alleges that as subcontractor of one C.... D.... [*principal contractor*], on and between [*give dates*] he performed labor and furnished materials for the erection of that certain dwelling house situated upon [*describe land*], a true account of which labor and materials so furnished, with dates of furnishing and the reasonable value thereof is as follows:

[*Insert itemized account.*]

The said A.... B.... further states that no part of said account has been paid, and that said dwelling house and land is owned by L.... M...., of . . . . ., county of . . . . ., state of South Dakota.

A.... B....

[*Venue.*]

A.... B.... being duly sworn says that he has read the foregoing statement and knows the contents thereof, and that the same is just and true.

A.... B....

[*Jurat.*]

**666. Notice of thresher's lien (S. Dak. C. C. P. 1908 sec. 739).**

[*Venue.*]

A.... B.... being duly sworn, says that at the times hereinafter stated he owned and operated a threshing machine in the state of South Dakota [or was a member of the firm of A.... B.... and Company, composed of deponent and E.... F...., which firm at the time hereinafter stated owned and operated, &c., *as above*]; that between the .... day of ....., 19.., and the .... day of ....., 19.., the said A.... B.... [or the said firm] threshed for one C... D.... a quantity of grain, which said grain was grown upon the following described premises [*describe farm*], county of ....., South Dakota; that the following is a true account of the kind of grain, and the number of bushels so threshed for the said C.... D...., and the price agreed upon for such threshing as aforesaid:

.... bushels of wheat at the agreed price of ....c.	
per bushel .....	\$
.... bushels of oats at the agreed price of ....c.	
per bushel .....	

Total .....	\$
-------------	----

That there is due and owing to said A.... B.... [or, to said firm] from the said C.... D.... for threshing the grain and seed, as per above account, the sum of ..... dollars, for which amount said A.... B.... [or said firm] claims a lien on said grain so threshed as aforesaid, pursuant to law.

A.... B....

[*Jurat.*]

**667. Claim for mechanic's lien (Okla. Comp. laws 1909 secs. 6152, 6153).**

[*Here may be used the forms already given in this chapter for use in Kansas.*]

**668. Claim for mechanic's lien (Oregon laws 1910, sec. 7420).**

[*The forms already given in this chapter for use in California may with slight changes be used in Oregon. It is to be noted*



*that it is not required that the statement shall contain "the terms, time given and conditions of the contract" as in California.]*

**669. Claim for lien, unwritten contract (Tex. Civ. Stats. Ann. 1913 arts. 5624, 5625).**

*[As the sections named prescribe forms for the claim it is not thought necessary to reprint them here.]*

**670. Claim for lien (Utah Comp. laws 1907 sec. 1386).**

*[The form heretofore given in this chapter for use in California may be readily adapted for use in Utah with some additions which will be apparent on examination of the statutes of Utah.]*

**671. Subcontractor's notice (Utah Comp. laws 1907 sec. 1388).**

To Whom it May Concern:

NOTICE is hereby given that I am about to commence [or have commenced] to furnish materials and to perform work upon a certain structure now being erected [or about to be erected] upon that certain piece or parcel of land described as follows [*describe land*]; that said materials and labor are to be furnished [or have been and are to be furnished] under the terms of a certain contract between this claimant and one C.... D.... [*name principal contractor*] dated ....., 19.. [or at the request of C.... D....]; that the value of the work already done and the materials already furnished is ..... dollars as near as may be; and that the probable value of the work to be done and the materials to be furnished is ..... dollars.

Notice is also hereby given that I intend to hold and claim a lien upon the parcel of land above described and upon the buildings and improvements thereon for the full amount of the said labor and materials furnished and to be furnished as aforesaid.

[Date.]

A.... B....

**672. Materialmen's notice (Wash. Rem. and Bal. Code 1910 sec. 1134 as amended).**

To C.... D...., Owner [or reputed owner] of the premises hereinafter described:

YOU ARE HEREBY NOTIFIED that the undersigned has commenced to deliver materials and supplies for use upon that certain building, wharf [*or otherwise name the structure according to the fact*] now being erected upon that certain parcel of land in . . . . . county, state of Washington, described as follows: [*describe land*].

That said materials and supplies are being furnished at request of E. . . . F. . . . who is ordering the same as your contractor [*or agent*]; and that a lien may be claimed by the undersigned upon said structure and parcel of land for all materials and supplies furnished by him for use thereon.

The first of said materials and supplies were delivered by the undersigned on the . . . . day of . . . . ., 19..

Said materials and supplies consist of [*describe same*].

[*Date.*]

A. . . . . B. . . . .

**673. Claim for lien (Wash. Rem. and Bal. Code 1910 sec. 1134).**

[*As the section of the statute above cited provides a form of claim it is not deemed necessary to insert the same here.*]

**674. Claim for lien (Wyo. Comp. Stats. 1910 sec. 3803).**

[*The form already given for use in California may with slight changes be used in Wyoming.*]

## CHAPTER XIV.

### TEMPORARY INJUNCTIONS.

675. Affidavit on which to move for temporary injunction *pendente lite* to prevent defendant from doing some act which will render the judgment ineffectual. (General form.)
676. Supporting affidavit where motion is based upon a verified complaint. (General form.)
677. The same, another form.
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| <p>715. Against use of a secret in trade, by one who acquired it in violation of contract.</p> <p>716. Against infringement of trademark.</p> <p>717. Against infringement of sign.</p> <p>718. In creditors' actions.</p> <p>719. Against entering confession of judgment.</p> <p>720. In partnership causes.</p> <p>721. Another form; where dissolution is not sought.</p> <p>722. Against the reorganization of a corporation.</p> <p>723. Against railroad company interfering with construction of crossroad.</p> <p>724. Against usurping office and taking the fees.</p> <p>725. Against proceedings at law, in ejectment.</p> <p>726. The same; in action on contract.</p> <p>727. The same, with leave to proceed to judgment.</p> <p>728. Against proceedings for dis-possession.</p> <p>729. Against flooding mining claim.</p> <p>730. Against obstructing streams, etc.</p> <p>731. Against diverting a water-course.</p> <p>732. Against imitating plaintiff's publications.</p> <p>733. Against laborers and labor organizations to prevent picketing.</p> | <p>734. Order granting writ. (Minn.)</p> <p>735. Bond for injunction. (Minn.)</p> <p>736. Writ of temporary injunction. (Minn.)</p> <p>737. Notice of application for temporary injunction. (Iowa.)</p> <p>738. Order allowing injunction, to be endorsed on the petition. (Iowa.)</p> <p>739. Bond on injunction. (Iowa.)</p> <p>740. Writ of injunction. (Iowa.)</p> <p>741. Order to show cause why temporary injunction should not be granted with restraining order. (Nebraska.)</p> <p>742. Order granting injunction and requiring bond. (Nebraska.)</p> <p>743. Injunction bond. (Nebraska.)</p> <p>744. Order of injunction. (Nebraska.)</p> <p>745. Affidavit for modification or vacation of temporary injunction.</p> <p>746. Notice of motion to vacate or to modify injunction.</p> <p>747. Order vacating or modifying injunction.</p> <p>748. Notice of motion for reference to ascertain damages.</p> <p>749. Order of reference.</p> <p>750. Notice of motion to confirm report of referee.</p> <p>751. Order confirming referee's report.</p> <p>752. Injunction bond. (Texas.)</p> <p>753. Fiat for injunction. (Texas.)</p> <p>754. Writ of injunction. (Texas.)</p> |
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The provisional remedy by means of which the *status quo* is preserved during the pendency of an action is called a temporary injunction and forms the subject of the forms given in this chapter. In some code states the remedy consists simply of an order of court issued by a court or judge while in others it consists of a formal writ issued on the allowance of a court or judge.

These differences in procedure however do not affect the real character of the remedy. In general terms it may be said that the remedy will be granted when it satisfactorily

appears by positive verified allegations in the pleadings or affidavits or both that unless it be granted some act will be committed seriously prejudicial to the rights of the moving party or tending to render the judgment nugatory in case he recovers in the action.<sup>1</sup>

**675. Affidavit on which to move for temporary injunction pendente lite to prevent defendant from doing some act which will render the judgment ineffectual (General form).**

[*Title.*]

[*Venue.*]

A.... B.... being first duly sworn, says that he is the plaintiff in the above entitled action; that the same was commenced by the service of summons on the defendant on the .... day of ....., 19.., and that said defendant threatens and is about to remove and dispose of his property with intent to defraud his creditors, and particularly this plaintiff [*or state particularly the threatened act which it is desired to be enjoined and which tends to render a judgment ineffectual.*]

That affiant's knowledge of the said defendant's purpose is as follows [*state the facts showing defendant's purpose.*]

That said acts and doings are in violation of this affiant's rights, and tend to render the judgment which he seeks herein ineffectual.

A.... B....

[*Jurat.*]

<sup>1</sup> A temporary injunction may be granted to the plaintiff, under statutes cited, in the following cases:

(1) When it shall appear by the complaint that the plaintiff is entitled to the judgment demanded, and such judgment consists in restraining the commission or continuance of some act which would produce injury to the plaintiff; or when, during the litigation, it shall appear that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the

judgment ineffectual. (Wis. Stats. 1913 sec. 2774; Ariz. R. S. 1913 sec. 1456; Ark. Dig. of Stats. 1904 sec. 3695; Cal. C. C. P. 1906 sec. 526; Colo. Code Ann. 1911 sec. 159; Idaho Rev. Codes 1908 sec. 4288; Kans. Gen. Stats. 1909 sec. 5844; Minn. Gen. Stats. 1913 sec. 7889; Mo. R. S. 1909 sec. 2515; Mont. Rev. Codes 1907 sec. 6643; Neb. R. S. 1913 sec. 7792; N. Dak. Rev. Codes 1905 sec. 6930; S. Dak. C. C. P. 1908 sec. 197; Okla. Comp. Laws 1909 sec. 5756; Oregon Laws 1910 sec. 419; Tex. Civ. Stats. Ann. 1913 art. 4643; Utah Comp. Laws 1907 sec. 3058; Wash. Rem. & Bal. Code



**676. Supporting affidavit where motion is based upon a verified complaint (General form).**

[Title.]

[Venue.]

E.... F.... being duly sworn, says that he has read the complaint in this action and is familiar with all the material matters stated therein, and has actual knowledge thereof; and that from such knowledge he knows that the matters of fact therein stated are true [*here add statement as to means of knowledge, etc., e. g. thus*]: that deponent, until a few days last past, was in the employ of said defendant as book-keeper and had free access to the books of said copartnership and of said defendant, and had and has personal knowledge of the financial and other business matters of the said concern, and of said defendant.

E.... F....

[Jurat.]

**677. The same, another form.**

[Title.]

[Venue.]

E.... F.... being duly sworn, says that he has [heard read] read the complaint in this action, and that he is the agent of the plaintiff in charge of the plaintiff's business in this state [*or otherwise state affiant's relation to the parties*].

1910 sec. 719; Wyo. Comp. Stats. 1910 sec. 4898).

(2) When, during the pendency of an action, it shall appear by affidavit that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, (Wis. Stats. 1913 sec. 2774; Idaho Rev. Codes 1908 sec. 4288; Kans. Gen. Stats. 1909 sec. 5844; Mont. Rev. Codes 1907 sec. 6643; Minn. Gen. Stats. 1913 sec. 7889; N. Dak. Rev. Codes 1905 sec. 6930; S. Dak. C. C. P. 1908 sec. 197; Okla. Comp. Laws 1909 sec. 5756; Oregon Laws 1910 sec. 419).

(3) In all cases where the applicant may show himself entitled thereto under the principles of equity. (Ariz. R. S. 1913 sec. 1456; Colo.

Code Ann. 1911 sec. 159; Iowa Ann. Code 1897 sec. 4354; Tex. Civ. Stats. Ann. 1913 art 4643).

(4) In cases specially authorized by statute. (Ark. Dig. of Stats. 1904 sec. 3695; Colo. Code. Ann. 1911 sec. 159; Kans. Gen. Stats. 1909 sec. 5844; Neb. R. S. 1913 sec. 7792; Okla. Comp. Laws 1909 sec. 5756; Tex. Civ. Stats. Ann. 1913 art. 4643; Wyo. Comp. Stats. 1910 sec. 4898).

(5) In Iowa, in all cases of breach of contract or other injury on which action is brought by ordinary proceedings, injunction may be had to prevent a repetition or continuance of the breach or injury. (Iowa Ann. Code 1897 sec. 4354).

(6) In Idaho, injunction for affirma-

That he, affiant, knows of his own knowledge that [*here state the facts within affiant's knowledge which he is able to swear to showing that an injunctional order is proper or necessary*].

E.... F....

[*Jurat.*]

### 678. Notice of motion for injunctional order (General form).

[*Title.*]

PLEASE TAKE NOTICE that on the verified complaint in this action [and upon the affidavit of A.... B...., both of which are attached hereto and served upon you] the undersigned will move the court at a .... term to be held at ..... on the .... day of ....., 19.., at .... o'clock in the ... noon, or as soon thereafter as counsel can be heard [*or will move before J.... K...., at his office in the city of ..... on the .... day of ....., 19.., at .... o'clock in the .... noon*] for an injunctional order restraining the defendant, his agents and servants, from [*here state concisely the act to be enjoined*]; and for such other or further order as may be just.

Dated ....., 19..

L.... M....

Attorney for Plaintiff.

To C.... D...., Esq.,  
Defendant.

### 679. Order to show cause why injunctional order should not be granted with temporary restraining order (General form).

[*Title.*]

Upon reading and filing the verified complaint in this

tive relief, having the force and effect of a writ of restitution, pending action. (Idaho Rev. Codes 1908 sec. 4288 sub. 6).

The Idaho statute provides that an injunction may be also granted to the defendant on a cross-complaint, upon the same grounds for the issuance thereof on a complaint. (Idaho Rev. Codes 1908 sec. 4288 sub. 5).

A temporary injunction may also be granted to the defendant when

it shall appear that the plaintiff is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the defendant's rights respecting the subject of the action and tending to his injury or to render ineffectual such judgment as may be rendered in his favor. (Wis. Stats. 1913 sec. 2775; Kans. Gen. Stats. 1909 sec. 5858; Tex. Civ. Stats. Ann. 1913 art. 4643; Utah Comp. Laws 1907 sec. 3058).

action, and the affidavits of the plaintiff and of E.... F...., and on motion of L.... M...., attorney for the plaintiff,

IT IS ORDERED that the defendant show cause before me at my chambers [*or office*] in the ..... of ....., in said county, on the .... day of ....., 19.., at ten o'clock A. M. of said day, why a temporary injunction should not be granted restraining said defendant from [*here specify particularly the act to be enjoined*].

It is further ordered that until the hearing of said motion and order therein, the defendant do absolutely desist and refrain from [*specify the act enjoined*].

And let a copy of this order be served on said defendant at least forty-eight hours before the time fixed for hearing the motion as aforesaid.

Dated at ....., in said county, this .... day of ....., 19..

J.... K...., Judge.

### 680. Undertaking on injunction (General form).<sup>2</sup>

[*Title.*]

WHEREAS A.... B...., the plaintiff herein, has applied [*or is about to apply*] for an injunction commanding the defendant herein to absolutely refrain from [*here specify the act to be enjoined*].

NOW, THEREFORE, we, A.... B...., plaintiff, as principal, and E.... F...., merchant, and G.... H...., farmer, both of ..... county, aforesaid, as sureties, do hereby undertake, pursuant to the statute, that the plaintiff will pay to the defendant C.... D.... such damages, not exceeding ..... dollars, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto, such damages to be ascertained by reference or otherwise as the court shall direct.

Dated at ....., ....., 19..

A.... B....

E.... F....

G.... H....

[*Justification by sureties, and acknowledgment if required by statute or rule of court.*]

<sup>2</sup>The condition of the bond or undertaking varies somewhat in the different states and the statute of the particular state should be carefully

followed in stating the condition, and the necessary changes made in the form.

I hereby approve the within undertaking as to form and sufficiency of sureties.

J.... K...., Judge.

**681. The same, another form.**

[Title.]

WHEREAS, the above named plaintiff has commenced a suit in the ..... court of the state of ..... in and for ..... county, against the above named defendant and is about to apply for an injunction in said suit against said defendant enjoining and restraining him from the commission of certain acts, as in the affidavit filed in the said suit is more particularly set forth and described.

NOW, THEREFORE, we, A.... B.... as principal, and E.... F... and G.... H.... as sureties, in consideration of the premises, and of the issuing of said injunction, do jointly and severally undertake and promise to the effect that in case said injunction shall issue, the said plaintiff shall pay all costs and disbursements that may be decreed to the defendant, and such damages not exceeding the amount of ..... dollars, as he may sustain by reason of the said injunction, if the same be wrongful or without sufficient cause.

Dated this ..... day of ..... 19..

A.... B.... [Seal]

E.... F.... [Seal]

G.... H.... [Seal]

[Add justification by sureties and approval by proper officer].

**682. The same, the form of a bond.**

[Title.]

KNOW ALL MEN by these presents, that we, A.... B.... as principal, and E.... F.... and G.... H.... as sureties, are held and firmly bound unto C.... D...., the defendant above named, in the penal sum of ..... dollars for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

THE CONDITION of the above obligation is such, that whereas, the above named A.... B.... plaintiff has procured the issuance of a temporary injunctional order [or

writ of injunction] in the above entitled cause against the above named C.... D...., defendant,

Now, therefore, if the said plaintiff shall pay to the party injured all damages which he may sustain by reason of said injunction, including reasonable attorney's fees, if it shall be finally determined that said injunction ought not to have been granted, then this obligation shall become void. Otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names this .... day of ....., 19..

A.... B....  
E.... F....  
G.... H....

[*Add justification of securities and approval.*]

**683. Injunctional order granted on motion (General form).**

[*Title.*]

On reading and filing the verified complaint of the plaintiff herein; and the affidavits of the plaintiff and E.... F...., from which it appears that necessity exists therefor;

And the plaintiff having given an undertaking as required by law, in the sum of ..... dollars, which has been duly approved;

And on motion of L.... M...., attorney for the plaintiff;

IT IS ORDERED that C.... D...., defendant herein, his attorneys, agents and servants, do absolutely desist and refrain from [*here specify act enjoined*] until the further order of the court.

Dated at ....., this .... day of ....., 19..

J.... K...., Judge.

**684. The same, when granted on order to show cause (General form).**

[*Title.*]

The motion for a temporary injunction herein, coming on to be heard upon the order to show cause herein, at the time and place specified therein;

On reading the affidavits of the plaintiff and E.... F...., and the verified complaint of the plaintiff in support of the motion and the affidavits of the defendant and G.... H....



in opposition thereto, and after hearing L.... M...., Esq., attorney for the plaintiff, for, and N.... O...., Esq., attorney for defendant, in opposition to the motion, the plaintiff having given an undertaking in the sum of ..... dollars, as required by law, which has been duly approved;

IT IS ORDERED that C.... D...., defendant herein, his attorneys, agents and servants do absolutely desist and refrain from [*here specify what*] until the further order of this court.

Dated at ..... this ....day of ....., 19..

J.... K...., Judge.

### 685. The same, in the form of a writ.

[*Title.*]

In the name of the state of ..... [*or otherwise as the address of writs may be prescribed by the laws of the particular state*];

To C.... D....

Greeting:

The above named plaintiff having filed his verified complaint in the ..... court of the state of ....., for the county of ....., praying for an injunction against said defendant requiring him to refrain from certain acts, herein-after more particularly mentioned; it satisfactorily appearing therefrom, that it is a proper case for an injunction, and that sufficient grounds exist therefor, and the necessary undertaking having been given:

WE THEREFORE, in consideration of the premises, do strictly command that until further order of said court you and each of you, your and each of your servants, agents, attorneys, employees, and all persons acting under the control, authority, or direction of you or either of you, do absolutely refrain from and desist from [*here state the act or acts to be enjoined*].

[SEAL]

WITNESS Hon. J.... K....,  
Judge, etc,

N.... O....  
Clerk ..... Court.

**686. Proof of service of injunction by affidavit (General form).**

[*Title.*]

[*Venue.*]

W.... X.... being first duly sworn, says that he is the [clerk in the office of] attorney for the plaintiff in the above entitled action, and that on the .... day of ....., 19.., at the hour of .... o'clock in the .... noon at ....., in said county, he served the injunctional order [of which a copy is] hereto annexed on the defendant C.... D.... by exhibiting the original order to said defendant, and the signature of Hon. R.... S.... thereon, and by delivering to and leaving with said defendant a true copy of said order and the following papers, to-wit, [*here specify other papers, if they are served with order*], and that he, the affiant, knew the person so served to be the defendant in this action, on whom said injunction was to be served.

W.... X....

[*Jurat.*]

VARIOUS STATEMENTS OF ACTS ENJOINED, TO BE INSERTED  
OR ADAPTED FOR USE IN THE FOREGOING FORMS, VIZ:

**687. Against waste or alienation.**

From pulling down or otherwise injuring the buildings standing on the premises hereinafter described or any part thereof, or from committing any waste, spoil, or destruction upon the said premises, and from executing and procuring to be executed any conveyance of the said premises, to any person or persons other than to the plaintiff, or as he shall direct.

The said premises are known as ....., and are bounded and described as follows [*description*].

**688. Against waste by ploughing or by cutting timber.**

From ploughing up any of the field forming part of the premises [*designating them*], from cutting down, felling, barking, or otherwise wasting or impairing any timber trees, or underwood standing and growing on [*designating the premises*], and from committing any further or other waste or spoil in or upon the said land and premises.

**689. Against waste in respect of house or ornamental trees.**

From committing waste, spoil, or destruction in the mansion or other houses upon [*designate the premises*] and from cutting down any timber or other trees growing upon the said estates, which are planted or growing there for the protection of the said mansion and other houses belonging to the said estates or for the ornament of the said house, or which grow in lines, walks, vistas, or otherwise for the ornament of the said houses, or of the gardens, parks, or pleasure-grounds thereunto belonging; and also to restrain him, his servants, workmen, and agents, from cutting down any timber or other trees, except at seasonable times, and in husbandlike manner; and likewise from cutting saplings and young trees not fit to be cut, as and for the purposes of timber.

**690. Against working a mine.**

From working the veins or seams of coal, iron, stone, and other minerals lying in, upon, or under the [*designate lands*] and from digging, getting and carrying away or selling or disposing of the coal, culm, and iron, stone, and other minerals produced therefrom.

**691. Against tenant of a mine.**

From carrying the brick-clay, or bricks or tiles made thereof, off the land [*designating it*]; from working away sufficient barriers in the seam in the parts adjoining; from making a communication into adjoining collieries, and from draining any other mines, or permitting the same to be drained, by means of the demised colliery; and from permitting the communication complained of to continue open, and from permitting any water to flow through the same into the demised colliery; and from raising, by means of the shafts on the demised premises, any coal of any other proprietor; and from carrying the same over the demised premises.

**692. Against taking possession of lands without payment.**

From entering upon any part of the lands hereinafter

described, until the said defendants shall have paid the plaintiff . . . . . dollars; and that if the said defendants shall not pay the said sum of . . . . . dollars, being the residue of the purchase money of said lands, by the said . . . . . day of . . . . ., then, and in such case, the said defendants are hereby restrained from in any wise proceeding with the works of their railroad in, upon or over any part of the said lands.

The said premises are known as . . . . . and bounded and described as follows [*description*].

### 693. Against taking rents and profits.

From collecting, receiving, or intermeddling with the rents and profits of the premises known as . . . . . at . . . . . and described as follows [*description*].

### 694. Against removing fixtures.

From removing or causing to be removed from the premises hereinafter described any bricks, timber, building materials, copper pans, or fixtures. Said premises are known as . . . . . at . . . . . and described as follows [*description*].

### 695. Against nuisance; burning brick.

From burning or manufacturing, or causing to be burnt or manufactured, bricks on a piece of land or premises in the defendant's possession [*describe the premises by name or abuttals, or otherwise. If by abuttals, the description may be thus: abutting on the east, south and west on the lands and premises of the plaintiff*], situate in the town of . . . . ., in the county of . . . . ., and whereon is erected a brick-kiln, so as to occasion damage or annoyance to the plaintiff as owner, or to his tenants respectively as occupiers of a dwelling-house of the plaintiff [*describe plaintiff's premises*] situate in . . . . . aforesaid.

### 696. The same; continuance of slaughter-house.

From occupying a building erected by the defendant Y . . . . . Z . . . . . on the [north] side of . . . . . street, between . . . . . and . . . . . avenues in the . . . . . of . . . . ., county of . . . . . and state of . . . . ., as a slaughter-house, and from slaughtering any animals in such building, and from permitting the building to be used as a slaughter-house.

**697. Against noisy bells.**

From tolling or ringing the chapel bell and the church-bells in the . . . church at . . . . ., or any of such bells, and from permitting the said bell or bells, or any of them, to be tolled or rung so as to cause or occasion any nuisance, disturbance, or annoyance to the plaintiff and his family, residing in his dwelling-house at [*designating residence*].

**698. Against obstructing lights.**

From rebuilding or completing, or improving the messuage or dwelling-house [*designating it*] or making or erecting any building or improvements whatsoever, or in such a manner as to darken, injure, or obstruct any of the [ancient] lights or windows of the plaintiff's messuages or tenements, or either of them [*designating them*] until the further order of the court.

**699. Against undermining plaintiff's land.**

From excavating or removing any soil from any land adjoining the plaintiff's premises [*designating them*] which shall cause the plaintiff's land, by reason of the withdrawal of its lateral support, to fall away or subside.

**700. Against stopping a way.**

From stopping up, obstructing, or injuring, or from continuing to stop up, obstruct, or injure the free passage of [*distinctly designating the way*].

**701. Against erection, and to compel removal, of buildings.**

From continuing the projected buildings, or commencing any other buildings whatever, on the garden or plot of ground described as follows [*description*]: or any part thereof; and also from permitting such part of the said buildings as have been already erected on the said garden or plot of ground from remaining thereon.

**702. Against authorizing the laying of a railroad in a city street.**

That an injunction-order may be issued by this court,



directed to the said defendants, the mayor, and aldermen of the city of . . . . . their counsellors, attorneys, solicitors, and agents, restraining and enjoining them, and each and every of them, and all others acting in aid or assistance of them, from granting, or in any way or manner authorizing J. . . . S. . . . and others, the persons named in a resolution, a copy of which is hereto annexed, or their associates, or any other person or persons whomsoever, the right, liberty, or privilege of laying a double or any track for a railway in said . . . . . street from . . . . . to . . . . ., or any railway whatever in said . . . . . street, or of breaking or removing the pavement, or in any other manner to obstruct the said street, preparatory to or for the purpose of laying or establishing any railway therein.

**703. Against laying a railroad in a city street.**

From entering into, or upon . . . . . and . . . . . streets for the purpose of laying or establishing a railroad therein, and from digging up or subverting the soil, or doing any other act in those streets tending to incumber them or to prevent the free and common use thereof, as the same have been heretofore enjoyed [until compensation shall have been made therefor, pursuant to the provisions of the statute].

**704. Against violation of covenant to build.**

From erecting upon [*here designate the land*] any brewery, or other building, except one private house or ornamental cottage, to be erected on [*designating what part*].

**705. Against contractor interfering with work after forfeiting his contract.**

From retaining possession of, or entering upon or interfering with, the main line of the plaintiff's railway from . . . . to . . . . and the branch line of railway from the main line to the intended junction with the M. . . . and L. . . . Railway at . . . . ., and the work connected with the main and branch lines respectively; and from proceeding in any manner to construct, complete, or repair the works, by the contract of the . . . . day of . . . . ., 19. . ., agreed to be constructed, completed, or repaired, or any of such works; and from removing, or causing or permitting to be removed,

the materials of any description being on or about the said lines of railway and works, or any part thereof respectively, or any of such materials; and from in any manner interfering with or disturbing the possession or use or enjoyment by the company, their officers, contractors, agents, servants, or workmen of the said lines of railway and works or any part of the same respectively; and from in any manner obstructing or preventing the company, their officers, contractors, agents, servants, or workmen, from constructing, completing, or repairing the said works by the contract agreed to be constructed, completed or repaired, or any of such works; and from in any manner interfering with or preventing the company, their officers, contractors, agents, servants, or workmen, in the use or employment of the said materials in constructing, completing, or repairing the works, or any of them.

**706. Against underletting.**

From granting or making or contracting to grant or make, any leases, underleases, or assignments of any part of the premises [*designating them*], demised by A.... B.... to C.... D.... by a lease dated on, &c.

**707. Against carrying on business forbidden by lease.**

From carrying on the auction business, or selling goods at public auction, in the store No. .... street, in the city of .....; and from conducting therein any business other than the regular dry goods jobbing business.

**708. Against transferring negotiable paper.**

From indorsing, assigning, or in any way transferring [*here describe the note or bill, e. g. thus: a bill of exchange drawn by M.... N.... upon the above-named A.... B...., for ..... dollars, bearing date on or about the .... day of ....., 19.., and payable .... months after said date, and accepted by said A.... B....*]

**709. Against transfer of stock.**

From selling, or transferring or incumbering, .... shares of the capital stock of the X.... Y.... company, standing on

the books of the said company, in the name of A. . . . B. . . . ; and the said company are, in like manner, restrained from permitting such sale, transfer, or incumbering [and from paying any dividend thereon] without the order and direction of this court.

**710. Against transferring assets.**

From selling, assigning, transferring, pledging, or otherwise disposing of, any of his property, except what is by law exempt from execution; or from in any manner interfering therewith until the further order of the court.

**711. Against publishing book.**

From printing, publishing, or causing or being in any way concerned in the printing, publishing, or selling, or exposing to sale, or otherwise disposing of any copies of [*designate book*] or any other book purporting to be or resembling the book so printed, published and sold by or for the plaintiff [other than and except plaintiff's own selection, printed and published by plaintiff's order, and for plaintiff's use and benefit].

**712. Against publishing private letter.**

From printing, publishing, circulating, or in any manner, either by writing or otherwise, making public a letter written by F. . . . N. . . . on or about the . . . . day of . . . . , 19. . . , and forwarded to O. . . . P. . . . at . . . . or any part thereof.

**713. Against resuming practice, after having sold business.**

From practicing as an attorney or solicitor in any part of . . . . , either in his own name or in the name of any other person; and from endeavoring to induce any persons who were the clients of B. . . . & C. . . . to cease or abstain from employing A. . . . & B. . . . as their attorneys or solicitors.

**714. Against disclosure of secrets by clerk.**

From taking or retaining any copies of, or extracts from any books, papers, documents, or extracts of the above-named A. . . . B. . . . & Co., or either of them, in the possess-

sion, custody, or power of the defendant; and from communicating the said particulars, or the contents thereof, or any of the information therein contained, to any person or persons whatever; and from communicating any of the information possessed or acquired by him relating to the said copartnership, or the affairs or secrets thereof, or the clients thereof, by means of his having been employed as accountant or clerk by said A.... B.... & Co., and having access to said books, papers, and documents.

**715. Against use of a secret in trade, by one who acquired it in violation of contract.**

From selling, or causing or procuring to be sold, under the title and designation of "Morison's Universal Medicine" or "Morison's Vegetable Universal Medicine," any medicine made or manufactured by the defendant, or by or under his order or direction; and from making or compounding any medicine according to the secret in the complaint mentioned, &c.; and from in any manner using the secret of compounding the said medicines, or any part thereof.

**716. Against infringement of trademark.**

From selling or exposing for sale, or procuring to be sold, any composition or blacking described as, or purporting to be, blacking manufactured by Day & Martin, in bottles, having affixed thereto such labels, as are mentioned in the complaint, or any other labels, so contrived or expressed as, by colorable imitation or otherwise to represent the composition or blacking sold by the said defendant to be the same as that manufactured and sold by the plaintiff; and from using trade-cards, so contrived or expressed as to represent that any composition or blacking sold, or proposed to be sold by the defendant, is the same as that manufactured or sold by the plaintiff.

**717. Against infringement of sign.**

From running or in any manner using or causing to be used, for the conveyance of passengers, any omnibus, having painted, stamped, printed, or written thereon the words or names "London Conveyance," or "Original Conveyance for Company," or any other names, words, or devices painted,

stamped, printed, or written thereon, in such manner as to form or to be a colorable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiffs.

### 718. In creditors' actions.

From selling, assigning, or transferring, receiving, collecting, discharging, or incumbering, or in any manner disposing of or interfering with any property, real or personal [not exempt by law from execution], things in action, or other equitable property or interests, of any kind whatever, held or controlled by him, or by any other person held in trust for him or for his use and benefit, or in which he has any interest whatever. [*And where the complainant seeks to reach the surplus proceeds of a trust beyond what is necessary for the debtor's support, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant, add*]: And said defendant and his agents are further enjoined from receiving or using, or suffering to be applied to his use, any more of [*here designate fund or income*] than the [annual sum or rate of dollars].

And said defendant and his agents are further enjoined from making any assignment of his property, and from confessing any judgment, for the purpose of giving preference to any other creditor over the plaintiff, or from doing any other act or thing to enable other creditors or persons to obtain any portion of his said property.

### 719. Against entering confession of judgment.

From entering up judgment on a warrant of attorney [*or, statement of confession*] executed by the plaintiff, A.... B...., to the defendant, Y.... Z.... [*or otherwise naming the parties*], and dated on or about the .... day of ....., 19.., and from commencing any proceedings thereon.

### 720. In partnership causes.

To restrain the defendant Y.... Z...., from selling, assigning, or transferring, receiving, collecting, discharging, or incumbering, or in any manner disposing of or interfering with any portion of the property, real or personal, of the copartnership heretofore [and now] existing between the



plaintiff and defendant, and of which an accounting is sought in this action, or of the debts, accounts, and demands, contracts, bills, bonds, notes, or evidences relating thereto, things in action, or other equitable property or interests and effects of any kind whatever of said copartnership, or in which they have an interest, and from doing, or suffering to be done, any act or thing to enable any person to obtain any portion of said property.

**721. Another form; where dissolution is not sought.**

From applying any of the moneys and effects of the copartnership otherwise than in the ordinary business, and from obstructing or interfering with the plaintiff in the exercise and enjoyment of his rights under the partnership articles.

**722. Against the reorganization of a corporation.**

That the said corporation, and the agents and officers thereof, be restrained from conveying, assigning, or making over the real and personal property of the society, or any part thereof, to any person or persons, upon and for the purposes [*designating those intended*] or any of such purposes, or in any other manner, in furtherance of the intention of the society to surrender the existing charter; and from affixing the common seal of the society to any deed or instrument for such purposes, or any of them and from surrendering the existing charter, and affixing the common seal of the society to any deed or instrument for that purpose; and from accepting a new charter, or any charter, inconsistent with the existing charter of the society.

**723. Against railroad company interfering with construction of cross-road.**

From interfering with or obstructing, hindering or preventing the plaintiffs, their servants, &c., from making and constructing the said bridge across and over the said . . . . . branch of the . . . . . railway, in the line or course prescribed by . . . . . and of the materials, and in the manner specified and directed by . . . . .; and they are in like manner restrained from continuing to maintain and uphold the walls [*describing them*] erected by the said defendants, or any other

walls, &c., whereby the plaintiffs, their agents, &c., may be prevented from constructing the said platform, and from making up and completing the said bridge, and from pulling down, taking up, or removing any scaffolding or other works or materials to be made, deposited, or laid down by the plaintiffs, their servants, &c., on the sides or slopes of the said . . . . . Railway, for the purpose of making and constructing the said bridge; and from preventing or hindering the agents, servants, or workmen of the plaintiffs from passing across the said last-mentioned railway, at proper and seasonable times during the progress of the said works, for the purposes thereof, and taking down or removing [*if necessary*] any such walls, &c. [the plaintiffs undertaking, during the progress of the said works, and every of them, not in any manner to interfere with or obstruct the traffic upon said . . . . . Railway, and, not in any respect to injure or damage the said . . . . . Railway, or the works thereof and undertaking to make and pay satisfaction to the defendants for any injury or damage which may be sustained by the defendants, by or from any temporary use of their land on the sides or slopes of the said railway].

#### 724. Against usurping office and taking the fees.

From molesting, interfering with, or disturbing the plaintiffs, or any of them, in the use, enjoyment, or exercise of the said duties respectively appertaining to the plaintiffs as the master and wardens of the port of . . . . . and their clerk; and from taking the fees thereof, and from demanding or receiving fees or emoluments from any person or persons for any such services; and from acting as surveyors of any vessel deemed unfit to proceed to sea, and from judging or acting as judges of the repairs which might be necessary for the safety of such vessel on the intended voyage; and from selling, under their inspection, vessels or goods arriving at the port of . . . . . damaged, and for the benefit of underwriters out of the city of . . . . .; and from certifying the cause of such damage, the amount of sale of such vessel or goods, and the charges attending the sale; and from taking or making any survey on board of any ship or vessel, or at any store in the city of . . . . . or along the docks or wharves thereof, of damaged goods; and from giving or granting any

certificate in consequence of damaged goods; and from taking or making any survey on board of, or relating to, any ship or vessel put into the port of . . . . . in distress, to ascertain the damage sustained thereby, and whether any such ship or vessel shall pay or be liable to foreign duties and tonnage, or otherwise.

**725. Against proceedings at law, in ejectment.**

To restrain the defendant Y . . . . Z . . . . from proceeding further against the plaintiff A . . . . B . . . . in the action commenced against him in the . . . . court of this state, for the recovery of the possession of [*designating the premises*] with their appurtenances; and also from instituting or proceeding in any new or other action at law for the recovery of the possession of said premises, or any part thereof.

**726. The same; in action on contract.**

To restrain the defendant, Y . . . . Z . . . ., from proceeding further in his action at law against A . . . . B . . . ., above named, upon the bond of the said A . . . . B . . . ., dated the . . . . day of . . . . ., 19 . . . ; and from instituting or proceeding in any new or other action at law upon such bond; and from commencing any action or actions against the plaintiff for the recovery of [*designating the alleged debt*].

**727. The same, with leave to proceed to judgment.**

[*Proceed as above, adding*]: But you are at liberty, without prejudice to the equitable rights of the plaintiff, to proceed to judgment only in the suit at law which you have commenced against the said A . . . . B . . . . notwithstanding this injunction.

**728. Against proceedings for dispossession.**

From taking any proceedings to dispossess the plaintiff from the house and lot No. . . . . street, in the city of . . . . ., and particularly from issuing any warrant of removal, or taking possession under proceedings commenced before Judge N . . . . M . . . ., of the county of . . . . ., on the ground that the demised premises were deserted by the tenant [*or, that rent was unpaid*].

**729. Against flooding mining claim.**

From permitting the floodgates of the defendant's reservoir to be open in such a manner as that the waters therefrom shall escape and flood the mining claim of the plaintiff in . . . . . and thus make it impossible for the plaintiff to work his said mine.

**730. Against obstructing streams.**

From discharging or dumping into the . . . . . river, or into any of its forks or branches, or into any stream or tributary to said river, or any of its forks or branches, and especially into . . . . . creek, . . . . . ravine, any of the tailings, boulders, cobble stones, gravel, sand, clay, *debris*, or refuse matter from any of the tracts of mineral land or mines described in the complaint; and also from causing or suffering to flow into said rivers, creeks, or tributary streams aforesaid, therefrom, any of the tailings, boulders, cobble-stones, gravel, sand, clay, or refuse matter resulting or arising from mining thereon.

**731. Against diverting a water-course.**

From diverting the water-course and water therein, [*describe and locate same*] from its natural course, running in a south and southeast direction across said land, and from turning the water from said land through any artificial channel, or otherwise, onto the land of plaintiff, and from interfering with plaintiff in his lawful and proper efforts to return said water to the natural channel and course through said land of defendant and off plaintiff's land, and in confining said water to the original channel, on and over defendant's lands; and defendant is hereby enjoined from obstructing said original channel, and from keeping the same obstructed, and from so plowing or ditching his land as to cause the said water to leave the said original channel and flow onto or across said lands of plaintiff.

**732. Against imitating plaintiff's publications.**

From publishing, issuing, circulating, selling, or exposing for sale, the books or pamphlets referred to in the complaint in this action as having been published, issued, sold and exposed for sale by the defendants, and thus using and

violating the trade-mark of plaintiffs, as set forth in said complaint, and from publishing, issuing, circulating, selling or exposing for sale any imitation or colorable imitation of the books or pamphlets set forth in said complaint, and thus using and violating the trade-mark of plaintiffs, as set forth in said complaint; and from publishing, issuing, circulating, selling, or exposing for sale, any imitation or colorable imitation of the books or pamphlets as set forth in said complaint, and thus using and violating said trade-mark, as in said complaint alleged.

### 733. Against laborers and labor organizations to prevent picketing.

From in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said [*name company*] for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in any wise molesting, interfering with or intimidating the employees of the said [*name company*] so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the [*name company*] are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.



**734. Order granting writ (Minn. Gen. Stats. 1913 sec. 7890).<sup>3</sup>**

[Title.]

On reading and filing the verified complaint in this action, and the affidavit of E. . . . F. . . ., from which it satisfactorily appears that sufficient grounds exist for the issuance of temporary injunction restraining the defendant from [*here specify act or acts to be enjoined*];

On motion of L. . . . M. . . ., attorney for the plaintiff;

IT IS ORDERED that such writ be granted and that the same issue out of this court, and that the plaintiff give a bond with two sufficient sureties in the penal sum of . . . . . dollars, to be approved by the undersigned, conditioned as provided by law [*or insert provisions required.*]

Dated . . . . ., 19. .

N. . . . O. . . ., Judge.

**735. Bond for injunction (Minn. Gen. Stats. 1913 sec. 7891.)**

[Title.]

KNOW ALL MEN by these presents that we, A. . . . B. . . ., as principal, and G. . . . H. . . . and J. . . . K. . . ., as sureties, are held and firmly bound unto C. . . . D. . . ., defendant in the above entitled action, in the sum of . . . . . dollars, lawful money of the United States, to be paid unto the said C. . . . D. . . ., his heirs, executors, administrators or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and each of our heirs, executors and administrators, firmly by these presents.

THE CONDITION of this obligation is such that, whereas the above named plaintiff has duly applied for a writ of injunction against said defendant in this action, according to the statute in such case provided;

<sup>3</sup> In Minnesota an injunction *pendente lite* must be in the form of a writ; hence, it must be allowed by the court or judge substantially as in the form here given, and the writ thereupon issues as in Form 736.

Note also that the security given in Minnesota must be by bond in-

stead of undertaking. In other respects the practice in Minnesota is substantially similar to that in Wisconsin, and the forms previously given in this chapter for use in that state may be adapted for use in Minnesota.

Now, therefore, if the said plaintiff shall pay the said defendant such damages as he sustains by reason of said writ if the court finally decide that the said plaintiff is not entitled thereto, then this obligation shall be void; otherwise to remain in full force.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals this . . . . day of . . . . ., 19..

	A.... B.... [Seal]
Signed, sealed and delivered	G.... H.... [Seal]
in presence of:	J.... K.... [Seal]
	P.... Q....
	R.... S....

[Venue.]

On this . . . . day of . . . . ., 19.., before me, a notary public within and for said county, personally appeared A.... B...., G.... H.... and J.... K...., to me known to be the persons described in and who executed the foregoing and within instrument, and acknowledged that they executed the same as their free act and deed.

W.... X...., Notary Public.

[Venue.]

G.... H.... and J.... K.... being duly sworn, each for himself on oath says, that he is a resident of and freeholder in the state of Minnesota; and that he is worth the sum below specified opposite his name over and above his debts and other liabilities, and exclusive of his property exempt from execution, to-wit: said G.... H.... the sum of . . . . . dollars, said J.... K.... the sum of . . . . . dollars.

G.... H....

J.... K....

[Jurat.]

I hereby approve the within and foregoing bond and the sureties thereon.

N.... O...., Judge, &c.

**736. Writ of temporary injunction (Minn. Gen. Stats. 1913 sec. 7888).**

[Title.]

THE STATE OF MINNESOTA,

To the Defendant C.... D.... and E.... F....

WHEREAS the said plaintiff A.... B.... has filed his

verified complaint in this court and has moved upon the said complaint and the affidavits of G.... H.... and J.... K.... for a writ of injunction enjoining you the said defendant from [*here state the acts sought to be enjoined*]; and it appearing to the satisfaction of this court from the said complaint and the said affidavits in support thereof that sufficient grounds exist therefor, and the proper bond having been given and approved;

NOW, THEREFORE, you the said defendants, and each and every of you, are strictly commanded that, until the further order of this court, you and each of you, your and each of your servants, agents, attorneys, employes, and all persons acting under the control, authority or direction of you or either of you, do absolutely refrain and desist from [*here state the acts enjoined*].

And this injunction you will observe under penalty of the law.

Witness the Hon. L.... M...., judge of  
the ..... court aforesaid and the  
[SEAL] seal of said court, this .... day of  
....., 19..

N.... O...., Clerk.

*Sheriff's return of service thereon.*

[*Venue.*]

I HEREBY CERTIFY and return that on the .... day of ....., 19.., I duly served the within writ upon the defendants therein named by exhibiting said writ with the signature of the clerk of the court and the seal of the court thereon and reading the same to them; and by handing to and leaving with said defendants a true and correct copy thereof.

R.... S....  
Sheriff.

**737. Notice of application for temporary injunction  
(Iowa Ann. Code 1897 secs. 4358, 4359).**

[*Title.*]

To C.... D...., defendant:

You are hereby notified that the above named plaintiff, on the .... day of ....., 19.., filed in the clerk's office of the ..... court his petition claiming [*here state the nature of the*

*action and the remedy sought*] and that said plaintiff has applied to the court [*or, judge*] for an order for a temporary injunction enjoining and restraining you from [*here state particularly the act or acts to be enjoined*];

And that the said application will be heard before the said court [*or, judge*] on the . . . . day of . . . . ., 19.., at [*specify place of hearing*] at which time and place you may appear and show cause against said application if you think proper.

Dated . . . . ., 19..

E. . . . F. . . . , Plaintiff's Attorney.

**738. Order allowing injunction, to be endorsed on the petition (Iowa Ann. Code 1897 sec. 4362).**

[*Venue.*]

Upon reading the within petition and the accompanying affidavit of E. . . . F. . . . [*if a hearing has been had add: and after hearing the parties*], it satisfactorily appearing that the plaintiff is entitled thereto;

IT IS ORDERED that a writ of injunction issue out of this court restraining the defendant from [*here state act or acts enjoined*], upon the filing of a bond in the office of the clerk of the court named in the petition, conditioned as required by law, in the penalty of . . . . . dollars, with sureties to be approved by said clerk.

Dated this . . . . day of . . . . ., 19..

N. . . . O. . . . ; Judge.

**739. Bond on injunction (Iowa Ann. Code 1897 secs. 4363, 4364, and 4365).**

[*Title.*]

KNOW ALL MEN by these presents that we, A. . . . B. . . . , principal, and G. . . . H. . . . and J. . . . K. . . . , sureties, are held and firmly bound unto C. . . . D. . . . in the penal sum of . . . . . dollars, lawful money of the United States, well and truly to be paid to the said C. . . . D. . . . and to his heirs, executors and assigns.

THE CONDITION of the above obligation is such that, whereas the said A. . . . B. . . . has this day [*or, on the . . . . day of . . . . ., 19..*] filed in the office of the clerk of the district court of the state of Iowa, in and for . . . . . county, a petition praying the issuance of an injunction to restrain

the defendant from [*here state act or acts to be enjoined*]; and whereas on the . . . . day of . . . . ., 19.. the Honorable N. . . . O. . . ., Judge of [*name court*] made an order on said petition allowing said writ of injunction;

Now, therefore, if the said A. . . . B. . . . shall and will pay all the damages which may be adjudged against him by reason of such injunction [*if proceedings in a civil action, or on a judgment or final order are sought to be enjoined, then add the following*: and will also pay the said judgment, or, will comply with said order if the injunction is not made perpetual, or, will pay any judgment that may be ultimately recovered against said plaintiff]; then this obligation to be void; otherwise to be and remain in full force and virtue.

Dated this . . . . day of . . . . ., 19..

A. . . . B. . . ., Principal.

G. . . . H. . . ., J. . . . K. . . ., Sureties.

[*Venue.*]

We, the undersigned, first being duly sworn, depose and say, and each for himself deposes and says that he is one of the sureties whose name is subscribed to the within and foregoing bond; that he is a resident of the state of Iowa; that he is worth double the sum secured by said bond beyond the amount of his debts and liabilities, to-wit: the sum of . . . . . dollars, and that he has property liable to execution in said state equal to the sum secured in said bond, to-wit the sum of . . . . . dollars.

G. . . . H. . . .

J. . . . K. . . .

[*Jurat.*]

[*Add approval by Clerk.*]

## 740. Writ of injunction (Iowa).

[*Title.*]

THE STATE OF IOWA:

To C. . . . D. . . . and E. . . . F. . . ., Defendants.

WHEREAS, A. . . . B. . . . as plaintiff, has this day filed in the office of the district court of the state of Iowa in and for . . . . . county, a petition duly sworn to making, C. . . . D. . . . and E. . . . F. . . . defendants therein, and praying for the allowance of a writ of injunction against said defendants:

And, whereas, the Hon. N. . . . O. . . . judge of the district court of said county, has made an order allowing said



writ of injunction to issue, upon the filing of a bond, with sureties, pursuant to said order; and, whereas, said order has been complied with, and such bond filed and approved:

NOW, THEREFORE, you, the said C.... D.... and E.... F...., defendants as aforesaid, and each of you, your servants, agents, and attorneys, and every one of them are hereby strictly enjoined and restrained from [*here state at length the acts to be enjoined*] until the further order of our said court in the premises; and this injunction you must strictly observe under the penalties of the law.

To the Sheriff of ..... County:

You are hereby commanded to make due service of this writ, upon said defendants, and hereof fail not, and make return of the writ, unto our said district court, with your doings hereon, on the first day of our said district court.

[SEAL] Witness, W.... X...., clerk of said court, and the seal thereof hereunto affixed this .... day of ....., 19..  
W.... X...., Clerk.

**741. Order to show cause why temporary injunction should not be granted with restraining order (Neb. R. S. 1913 sec. 7793).**

[*Form 679 with such slight changes as may be necessary may be used for this order.*]

**742. Order granting injunction and requiring bond (Neb. R. S. 1913 sec. 7796).**

[*Title.*]

Upon the verified petition of the plaintiff and the affidavit of G.... H.... after hearing the parties and duly considering the affidavits of C.... D.... and E.... F.... filed on behalf of the defendants, it satisfactorily appearing that the plaintiff is entitled thereto.

IT IS ORDERED that an order of injunction be and is hereby granted in this action, and that the same be issued by the clerk of the ..... court of ..... county, enjoining and restraining the defendant, C.... D.... from [*here state act enjoined*] during the pendency of this action or until further order in that behalf made;

And it is further ordered that the plaintiff give an undertaking executed by two sufficient sureties to be approved by the said clerk in the sum of ..... dollars, conditioned as required by law.

Dated ....., 19..

J.... K...., Judge.

#### 743. Injunction bond (Neb. R. S. 1913 sec. 7796).

[Title.]

WHEREAS a temporary injunction has been granted on the application of the plaintiff in the above entitled action, restraining the said defendants C.... D.... and E.... F.... during the pendency of this action, and until the further order of said court from [*here state the acts enjoined*];

NOW, THEREFORE, we, A.... B.... as principal, and G.... H.... and J.... K.... as sureties, do hereby undertake, jointly and severally, to the said C.... D.... and E.... F.... in the penal sum of ..... dollars, as fixed by the court, that the said A.... B.... shall pay to the said C.... D.... and E.... F.... all and singular the damages they or either of them may sustain by reason of such injunction, if it shall be finally decided that said injunction ought not to have been granted.

[Qualification of sureties.]

[Approval by clerk.]

A.... B....

G.... H....

J.... K....

#### 744. Order of injunction (Neb. R. S. 1913 sec. 7797).

[Title.]

To C.... D...., the defendant above named.

WHEREAS an application by the above named plaintiff for an order of injunction in this action has been duly granted, and the said plaintiff has given the undertaking required by law and by the order of allowance, which undertaking has been duly approved;

NOW, THEREFORE, it is hereby ordered that you and your agents and servants be, and you are hereby, enjoined and restrained from [*here state act or acts enjoined*] until further orders in this behalf made.

WITNESS my hand and the seal of said court this .... day of ....., 19...

[SEAL]

L.... M....

Clerk of [*name court*].

### 745. Affidavit for modification or vacation of temporary injunction.

[*Title.*]

[*Venue.*]

C.... D.... being duly sworn says that he is the defendant in this action and that on the .... day of ....., 19.., he was enjoined by order of this court [*or, by order of J.... K...., Judge, &c.*] from [*here state act enjoined*]; and

That the said [*order, or writ of*] injunction was granted without notice to the defendant;

That the affiant has fully and fairly stated the case in this action to L.... M...., his counsel, who resides at ..... [in said county] and that upon the statement thus made he is advised by said counsel that he has a valid and substantial defense to this action, and to the whole thereof.

And that [*here state the facts which furnish grounds for the modification or vacation of the injunction*].

And affiant makes this affidavit for the purpose of moving that the said injunction be vacated [*or, modified so as to permit and allow, stating what*].

C.... D....

[*Jurat.*]

### 746. Notice of motion to vacate or to modify injunction.

[*Title.*]

PLEASE TAKE NOTICE that on the defendant's answer and the affidavit of E.... F...., attached hereto, the undersigned will move the court, at a special term to be held at ....., on the .... day of ....., 19.., at .... o'clock in the .... noon, or as soon thereafter as counsel can be heard [*or will move before, designating the judge who granted the order, at his office in the city of ....., on the .... day of ....., 19.., at .... o'clock in the .... noon*] that the injunction issued in this action be vacated [*or be modified so as to permit defendant to, &c.*] with costs; and for such other or further relief as may be just.

Dated ....., 19..

L.... M....

Defendant's Attorney.

[*Address to plaintiff's attorney.*]

**747. Order vacating or modifying injunction.**

[Title.]

The motion of the defendant herein, to vacate [or modify] the injunction heretofore granted in this action, dated . . . . ., 19.., coming on to be heard before me, at chambers [or before the court] and on reading the complaint, the injunction, and the papers on which the same was granted herein, and the affidavits of G. . . . H. . . . and K. . . . J. . . . in support of this motion [and also the verified answer of the defendant], and after hearing W. . . . X. . . ., defendant's attorney for the motion, and Y. . . . Z. . . ., plaintiff's attorney, against it;

IT IS ORDERED that the said injunction be, and the same is hereby wholly vacated. [Or if it be modified: that the said injunction be modified as follows, *here specifying the modification*].

Dated . . . . ., 19..

By the Court:

[if order be made by the court].

L. . . . M. . . ., Judge

**748. Notice of motion for reference to ascertain damages.**

[Title.]

PLEASE TAKE NOTICE that on the undertaking and all of the files, records, and proceedings in this cause, the undersigned will move the court, at a special term to be held at . . . . ., on the . . . . day of . . . . ., 19.., at . . . . o'clock in the . . . . noon, or as soon thereafter as counsel can be heard,\* for a reference to ascertain the damages sustained by the defendant by reason of the injunction granted in this cause, on the . . . . day of . . . . ., 19..; and for such other or further order as may be just, and for the costs of this motion.

Dated . . . . ., 19..

L. . . . M. . . .

Defendant's Attorney.

[Address to Plaintiff's Attorney.]

**749. Order of reference.**

[Title.]

On reading and filing the notice of motion made by the defendant herein for an order of reference to ascertain the

damages sustained by the defendant by reason of the injunction heretofore granted in this action, and upon all the files, records and proceedings in this action, and upon motion of L.... M...., counsel for defendant, after hearing N.... O...., counsel for the plaintiff;

IT IS ORDERED that it be referred to Q.... R.... to ascertain the damages sustained by the defendant by reason of the said injunction, and to report the same to the court [and that .... day's notice of the hearing be given to G.... H.... and J.... K...., the sureties named in the undertaking given on obtaining said injunction].

Dated ....., 19..

By the Court:  
W.... X...., Judge.

### 750. Notice of motion to confirm report of referee.

[*Title.*]

[*Proceed as in Form 748 to the \* and continue*]: to confirm the report of the referee appointed on the .... day of ....., 19.., to ascertain the defendant's damages by reason of the injunction heretofore granted in this action [and for judgment thereon against the sureties]; and for such other and further relief as may be just.

[*Date.*]

L.... M....  
Defendant's Attorney.

[*Address to plaintiff's attorney and to sureties.*]

### 751. Order confirming referee's report.

[*Title.*]

On reading and filing the annexed order to show cause [or notice of motion] and upon all the files, records and proceedings in this action, and the referee's report, and the evidence on which the same was founded, and on motion of L.... M.... for the defendant, and after hearing O.... P... the plaintiff and for [*the sureties*], in opposition;

ORDERED that the said report of the referee herein be, and the same hereby is, in all respects confirmed [except as to the item of ..... dollars, paid by the defendant to the sheriff for his services in taking possession of the property and attending to sell the same; and as to that item, that it be reduced to ..... dollars and that on the defendant's



consenting to such reduction the report be thereon confirmed] with ..... dollars costs of this motion.

By the court:

X.... Y...., Judge.

**752. Injunction bond (Tex. Civ. Stats. Ann. 1913 art. 4654).**

[Title.]

KNOW ALL MEN by these presents, that we A.... B.... as principal, and E.... F.... and G.... H.... as sureties, do hereby acknowledge ourselves bound to pay to C.... D.... the sum of ..... dollars,

CONDITIONED that the said A.... B.... the plaintiff in the above entitled suit, will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be adjudged against him, if the injunction granted in said suit be dissolved, in whole or in part.

Witness our hands, this .... day of ....., 19..

A.... B....

E.... F....

G.... H....

Approved: L.... M....

Clerk ..... Court ..... County.

**753. Fiat for injunction (Tex. Civ. Stats. Ann. 1913 art. 4650).**

[To be endorsed upon the petition]:

It appearing to me upon inspection of the within petition that the within named applicant A.... B.... is entitled to the writ of injunction;

IT IS ORDERED that upon the giving of the bond hereinafter prescribed the clerk of the ..... court of ..... county do issue his writ of injunction enjoining and restraining the defendant C.... D.... his agents and servants from [here state acts enjoined with all the limitations and restrictions deemed necessary].

It is further ordered that the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ be and is hereby fixed at ..... dollars.

Dated ....., 19..

J.... K....

Judge.

754. Writ of injunction (Tex. Civ. Stats. Ann. 1913 art. 4656).

THE STATE OF TEXAS

to C.... D....

Greeting:

WHEREAS, A.... B.... has filed his petition in the ..... court of ..... county, Texas, on the .... day of ....., 19.., in a suit numbered .... on the docket of said court, wherein the said A.... B.... is plaintiff and the said C.... D.... is defendant, in which petition it is alleged that [*here set forth the facts stated in the petition as grounds for the issuance of the writ*];

And whereas, the Hon. J.... K...., judge of said court did on the .... day of ....., 19.. endorse upon said petition his written order as follows, [*copy order or fiat allowing the writ*];

And whereas said A.... B.... has executed and filed with the clerk of said court a bond payable to the adverse party in the sum of ..... dollars with two good and sufficient sureties which bond is conditioned as required by law and the fiat of the judge.

YOU ARE HEREBY COMMANDED until the further order of said court, to be holden within and for the county of ....., at the court house, in ....., on the .... day of ....., 19.., when and where this writ is returnable, to desist and refrain from [*here state acts to be enjoined with restrictions and limitations*].

Given under my hand and the seal of said court, at ..... on this .... day of ....., 19..

[SEAL]

L.... M....  
Clerk ..... Court.  
..... County.

[*The date of issuance must be endorsed on the writ.*]

## CHAPTER XV.

### RECEIVERS.

- |   |  |
|---|--|
| 755. Notice of motion for receiver.                                   | 769. Notice of motion to discharge receiver.   |
| 756. Order to show cause why receiver should not be appointed.        | 770. Affidavit to receiver's account.  |
| 757. Order appointing receiver, by the court.                         | 771. Notice of application for receiver. (Iowa.)   |
| 758. Order appointing receiver for partnership.                       | 772. Order appointing receiver. (Iowa.)  |
| 759. Order appointing receiver in foreclosure.                        | 773. Bond of receiver. (Iowa.)   |
| 760. Bond of receiver.  | 774. Receiver's oath (Iowa).   |
| 761. Another form.  | 775. Plaintiff's undertaking on ex parte application for appointment of receiver (North and South Dakota). |
| 762. Assignment of partnership assets to receiver.                    | 776. Receiver's oath (North and South Dakota).   |
| 763. Notice of motion to instruct receiver.                           | 777. Receiver's undertaking (North and South Dakota).  |
| 764. Receiver's petition for leave to sell real estate.               | 778. Notice of application for receiver (Nebraska).  |
| 765. Notice of receiver's motion for instructions as to distribution. | 779. Order appointing receiver (Nebraska).   |
| 766. Application of receiver to pay dividend.                         | 780. Bond of applicant for appointment of receiver (Nebraska).   |
| 767. Notice of motion to revoke appointment of receiver.              | 781. Bond of receiver (Nebraska).  |
| 768. Order revoking and appointing new receiver.                      |  |

A receiver may be called the executive arm of the court. By the appointment of a receiver, property which is in danger of being lost or prejudiced is preserved and property rights are enforced during the pendency of an action, for the benefit of those parties or persons who may ultimately be adjudged to be entitled to such property or property rights, or to share in them. Receivers are also appointed after judgment in order to carry it into effect; in case of dissolution of corporations and in various other situations; their functions being always to carry out the directions of the court. The

provisions of the statutes on the subject vary considerably in the different states.<sup>1</sup>

<sup>1</sup> *Wisconsin*, (Wis. Stats. 1913 sec 2728). A receiver may be appointed: (1) Before judgment, on the application of either party, when he establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired. (2) By the judgment, or after judgment, to carry the judgment into effect or to dispose of the property according to the judgment. (3) After judgment, to preserve the property during the pendency of an appeal; or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment or in an action by a creditor under section 3029. (4) In cases provided by any statute when a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights. (5) In such cases as are now provided by law or may be in accordance with the existing practice except as otherwise provided in this chapter.

*Arizona*, (Ariz. R. S. 1913 sec. 672). Judges of the superior courts may appoint a receiver in suits pending in said courts, when no other adequate remedy is given by law for the protection and preservation of property, or the rights of parties therein, pending litigation in respect thereto.

*Arkansas*, (Ark. Dig. of Stats. 1904 sec. 6342). Whenever it shall not be forbidden by law, and shall be deemed fair and proper in any case in equity, the court, judge or chancellor shall appoint some prudent and discreet person as receiver, who shall take an oath. A receiver may also be appointed in attachment proceedings, (Ark. Dig. of Stats. 1904 sec. 370) to take charge of, collect and account for all choses in action attached, etc.

*California*, (Cal. C. C. P. 1903 sec. 564). A receiver may be ap-

pointed by the court in which an action is pending, or by the judge thereof: (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured; (2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt; (3) After judgment, to carry the judgment into effect; (4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment; (5) In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; (6) In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

*Colorado*, (Colo. Code Ann. 1911 sec. 179). A receiver may be appointed by the court in which the action is pending, or by a judge thereof, or pending proceedings in the supreme court upon appeal or writ of error, by the court from whose final judgment such appellant proceedings are prosecuted, or by the judge of

**755. Notice of motion for receiver.**

[Title.]

TAKE NOTICE that upon [here designate motion papers, e. g. thus: the verified complaint in this action and upon the affidavits of W.... X.... and Y.... Z...., copies of which are herewith served upon you, and upon all the papers and proceedings heretofore filed or served] the undersigned will move the court, at a special term to be held at..... on the ....day of....., 19.., at....o'clock in the....noon, or as soon thereafter as counsel can be heard, for the appointment of a receiver of the rents and profits of the estate of the defendant [or of all the partnership property of A.... B....

such court: *First*—Before judgment, provisionally, on application of either party, when he establishes a prima facie right to the property, or to an interest in the property, which is the subject of the action, and which is in possession of an adverse party, and the property, or its rents and profits, are in danger of being lost, or materially injured or impaired. *Second*—After judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal; and *Third*—In such other cases as are in accordance with the practice of courts of equity jurisdiction.

*Idaho*, (Idaho Rev. Codes 1908 sec. 4329; amended by Idaho Laws 1909 p. 26). Substantially the same as California.

*Iowa*, (Iowa Ann. Code 1897 sec. 3822). On the petition of either party to a civil action or proceeding, where-in he shows that he has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court or judge shall prescribe, the court, or, in vacation, the judge thereof, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a re-

ceiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to him. Upon the hearing of the application affidavit, and such other proofs as the court or judge permits may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned, etc.

*Kansas*, (Kans. Gen. Stats. 1909 sec. 5860). Substantially the same as California.

*Minnesota*, (Minn. Gen. Stats. 1913 sec. 7892). Substantially as in Wisconsin.

*Missouri*, (Mo. R. S. 1909 sec. 2018). The court, or any judge thereof in vacation, shall have power to appoint a receiver, whenever such appointment shall be deemed necessary, whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject of a tender, and to keep and preserve all property and protect any business or business interest intrusted to him pending any legal or equitable proceeding concerning the same, subject to the order of the court.

*Montana*, (Mont. Rev. Codes 1907 sec. 6698). Same as in California.

*Nebraska*, (Neb. R. S. 1913 sec. 7810). Substantially as in California, except clause 5.

*North Dakota*, (N. Dak. Rev.



and C....D.... of the firm of A....B....& Co.] mentioned in the said complaint, with the usual powers and duties, and with power to [*here specify any particular power or duty specially desired in the case*] and for such other relief as may be just.

Dated....., 19..

L.... M....  
Plaintiff's Attorney.

To N.... O....,  
Defendant's Attorney.

### 756. Order to show cause why receiver should not be appointed.

[*Title.*]

Upon the verified complaint herein and the affidavits of W.... X.... and Y.... Z...., copies of which are directed to be served with this order, and upon all the papers and proceedings heretofore filed or served in this action, let the defendant show cause, on the....day of..... next, 19.., at ....o'clock in the....noon, before this court, at a special term to be held at the court house in the....of..... on that

Codes 1905 sec. 6989). Substantially the same as California.

*South Dakota*, (S. Dak. C. C. P. 1903 sec. 227). Same as in California.

*Oklahoma*, (Okla. Comp. Laws 1909 sec. 5772). Substantially the same as in California.

*Oregon*, (Oregon Laws 1910 sec. 1108). Substantially as in Wisconsin.

*Texas*, (Tex. Civ. Stats. Ann. 1913 art. 2128). Substantially as in California, except clause 3 and 4.

*Utah*, (Utah Comp. Laws 1907 sec. 3114). Substantially the same as in California.

*Washington*, (Wash. Rem. and Bal. Code 1910 sec. 741). A receiver may be appointed by the court in the following cases: (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim; (2) In an action between partners, or other persons jointly interested in any property or fund; (3) In all actions where it is shown

that the property, fund, or rents and profits in controversy are in danger of being lost, removed, or materially injured; (4) In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had; (5) When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights; (6) And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

*Wyoming*, (Wyo. Comp. Stats. 1910 sec. 4914). Substantially as in California.

day, or as soon thereafter as counsel can be heard, why a receiver should not be appointed of the [*designate the property briefly*] with the usual powers and duties, and with power to [*here specify any particular or unusual power desired*] and why the plaintiff should not have such other relief as may be just.

Dated . . . . ., 19..

R. . . . S. . . ., Judge.

### 757. Order appointing receiver, by the court.

[*Title.*]

Upon the summons and complaint in this action, and the affidavits of W. . . . X. . . . and Y. . . . Z. . . ., and upon all the papers and proceedings heretofore filed or served herein [and due proof of service of notice of this motion, no one appearing to oppose] and on motion of L. . . . M. . . ., of counsel for the plaintiff [*the clause in brackets above may be omitted; if it be added*]: and after hearing N. . . . O. . . ., of counsel for the defendant;\*

ORDERED that P. . . . Q. . . ., of . . . ., counsellor at law, be and hereby is appointed receiver of [*designating property briefly*] upon the said receiver executing, acknowledging, and filing with the clerk of this court a bond, in the usual form, to the clerk of this court and his successors in office, in the penalty of . . . . .dollars, with two sufficient sureties, who shall justify as in cases of arrest and bail, to be approved as to its form and manner of execution by this court; and upon the due qualification of said receiver,

It is further ordered, that he be vested with all the usual powers and rights of receivers appointed by this court, and with power to [*here specify particular power to be exercised*].

Dated . . . . ., 19..

By the court:

R. . . . S. . . ., Judge.

### 758. Order appointing receiver for partnership.

[*Proceed as in Form 757 to the \* and then continue*]:

ORDERED that P. . . . Q. . . . of . . . . in . . . . county, be and he is hereby appointed receiver to collect and receive the outstanding debts and moneys due to, or on account of the partnership business of the late firm of A. . . . B. . . . & Co., transacting business at . . . . ., and also to receive and take

possession of all the stock in trade, effects and property, of every nature and kind, of or belonging to the said partnership, upon his filing the bond executed to the clerk of this court and his successors in office, in the penal sum of . . . . . dollars, with sufficient sureties, who shall justify as in case of arrest and bail, and be approved by the court, conditioned for the faithful discharge of the duties of such receivership in the usual form.

And let the plaintiff and defendant forthwith upon such qualification of said receiver, deliver over to him all the stock in trade, effects and property of every kind and nature, of or belonging to said partnership, in their possession and subject to their control, or in the possession and control of either of them, and all moneys, bills of exchange, notes, drafts, checks, or other evidences of debt due or owing to said partnership, all books of account, accounts, receipts, vouchers and papers of every nature belonging to said partnership business or pertaining thereto.

Further ordered that said receiver continue the business of said firm in selling for cash the stock in trade in the present course of business by retail, and as rapidly as possible, without sacrifice, to convert the said stock into money. That as such receiver he have power to sue for and collect all debts or demands due said firm, and to compromise and settle the same if in his judgment such a course be necessary or advisable; to lease any real estate of said firm for a term not exceeding one year; to finish unmanufactured stock if he deem that course for the best interest of the parties; to sell at auction all desperate or doubtful claims, upon ten days public notice thereof, and [*insert any other special power desired*].

Dated . . . . ., 19..

By the court:  
R. . . . S. . . . , Judge.

### 759. Order appointing receiver in foreclosure.

[*Insert recitals as in Form 757, and proceed*]:

It appearing satisfactorily that the mortgaged premises are inadequate security for the mortgage debt, and that the persons personally liable therefor are insolvent;

ORDERED that R. . . . C. . . . of . . . . . in said county be, and he is hereby appointed receiver in this action of the

rents and profits of the mortgaged premises described in the complaint, upon his filing a bond executed to the clerk of the court and his successors in office in the penal sum of . . . . . dollars, with sufficient sureties, who shall justify as in case of arrest and bail and be approved by the court conditioned for the faithful discharge of the duties of such receiver in the usual form.

Further ordered that said receiver be, and is hereby empowered and directed:

1. To demand, collect and receive all rents for said premises, or any part thereof due and unpaid by tenants, or others, or hereafter to become due.

2. To rent or lease, from time to time not exceeding . . . . months, any part of said premises, and to keep the buildings thereon insured and in repair, and to pay the taxes and assessments upon said premises accruing during his receivership.

3. To bring and prosecute all proper actions for the collection of rents due on said premises, as well as all necessary actions and proceedings for the removal of tenants in default, or other persons, from said premises and to bring and prosecute all proper actions for the protection of said premises, or to recover possession thereof.

4. To employ an agent to collect said rents, manage said premises and keep the same insured and in repair if he shall deem necessary, and to pay the reasonable value of such services out of the rent received.

Further ordered that all persons now in possession of any part of said premises and not holding under valid leases do forthwith surrender possession thereof to said receiver, and that all tenants in possession of such premises, and such other person or persons as may be lawfully in possession thereof, do and they hereby are directed to attorn as such tenant or tenants to said receiver, and until the further order of the court, pay over to such receiver all rents of such premises now due and unpaid or that may hereafter become due, and that all persons liable to such rents are hereby enjoined and restrained from paying any rent for such premises to the defendant, his agents, servants or attorneys.

Further ordered that during the pendency of this action the defendant and his agents and attorneys be enjoined and restrained from collecting the rents of said premises, and from

interfering in any manner with the property or its possession, and that the said receiver retain the moneys which may come into his hands by virtue of his said appointment, until the sale of the premises mentioned in the complaint under the judgment to be entered in this action, and that he then, after deducting his proper fees and disbursements therefrom, apply the said moneys to the payment of any deficiency there may be of the said amount directed to be paid to the plaintiff in and by the said judgment, and in case there be no such deficiency, that he retain the said moneys in his hands until the further order of the court in the premises.

Further ordered that the said receiver and any party hereto may at any time, on proper notice to all parties who may have appeared in this action, apply to this court for further or other instructions, and for further power necessary to enable said receiver properly to fulfill his duties.

By the court:  
R.... S...., Judge.

### 760. Bond of receiver (Wisconsin).<sup>2</sup>

KNOW ALL MEN that we, P.... Q...., principal, and G.... H.... and J.... K...., sureties, all of ..... in ..... county, ....., are held and firmly bound unto W... X...., clerk of the circuit court in and for ..... county, ..... in the sum of ..... dollars, to be paid to said clerk, his successor in office, or assigns, for which payment, well and truly to be made we, and each of us, bind ourselves jointly and severally, and our respective heirs, executors and administrators, firmly by these presents.

WHEREAS, by an order of the circuit court for ..... county, made on the .... day of ....., 19.., in an action therein pending wherein A.... B.... is plaintiff and C.... D.... defendant, it was among other things ordered that the above bounden P.... Q.... be appointed receiver of all the property, effects, things in action, of the firm of A....

<sup>2</sup> Under sub. 6, Rule XXVII of the rules of the Wisconsin Circuit Court, the receiver's bond must run to the clerk of the Circuit Court in his official capacity. If in any other jurisdiction the bond is required to run to an individual or to some other official the necessary change should of course be made.



B. . . . & Co., a partnership, with powers and duties set forth in said order, and that he be vested with all rights and powers as such receiver, upon filing a bond for the faithful performance of his duties, in the penal sum of . . . . . dollars;

NOW, THE CONDITION hereof is such that if the said P. . . . Q. . . . shall duly account for what shall come to his hands or control as such receiver, and pay and apply the same from time to time, as he may be directed by said court, and shall obey such orders as the court may make in relation to such trust, and faithfully perform all his duties as such receiver, then this obligation to be void; otherwise of force.

P. . . . Q. . . . [Seal]

Signed, sealed and delivered

G. . . . H. . . . [Seal]

in presence of:

J. . . . K. . . . [Seal]

[Two witnesses]

[Add acknowledgment if required by statute or rules (Minn. Dist. Court Rules I) and justification of sureties as in case of arrest and bail.]

#### 761. Same, another form.

[Title.]

KNOW ALL MEN by these presents, that we, P. . . . Q. . . . as principal, and G. . . . H. . . . and J. . . . K. . . . as sureties, are held and firmly bound unto [*here insert name of the person or officer to whom under statute or rule or order of court the bond is required to run*], in the penal sum of . . . . . dollars, for the payment of which sum, well and truly to be made, we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally by these presents.

THE CONDITION of the above obligation is such, that whereas the above named P. . . . Q. . . . was on the . . . . . day of . . . . ., 19. . . , appointed receiver in the above entitled action, wherein A. . . . B. . . . is plaintiff and C. . . . D. . . . is defendant and required by said order of appointment to execute an undertaking in the sum aforesaid, for the faithful discharge of his duties as receiver.

Now, therefore, if the said P. . . . Q. . . . shall faithfully discharge the duties of receiver in said action and obey the orders of the court therein, then this obligation shall be void, otherwise of force.

IN WITNESS WHEREOF, we have hereunto subscribed our names this . . . . day of . . . . ., 19..

P.... Q....  
G.... H....  
J.... K....

[*Venue.*]

G.... H.... and J.... K.... the sureties in the within and foregoing bond being each duly sworn says, I am a resident householder and freeholder within the state of . . . . . and have property within said state over and above all my just debts and liabilities and exclusive of property exempt from execution worth the sum set out and stated below, that is to say: I, G.... H...., am worth the sum of . . . . . dollars; I, J.... K...., am worth the sum of . . . . . dollars.

G.... H....  
J.... K....

[*Jurat.*]

The above bond approved this . . . . day of . . . . ., 19..

N.... O....  
} [*Official title.*]

## 762. Assignment of partnership assets to receiver.

THIS INDENTURE, made the . . . . day of . . . . ., 19.., between A.... B.... and C.... D...., heretofore partners in trade, doing business in the city of . . . . . under the style of A.... B.... & Co. of the first part; and R.... C...., of &c., receiver of the estate and effects hereinafter referred to, appointed by the . . . . . court of . . . . . of the second part;

Whereas, in and by an order of the said court, before, &c., in a certain action wherein the said A.... B.... was plaintiff and the said C.... D.... was defendant it was ordered that said R.... C.... be appointed receiver of the estate and property of said partnership, with powers as in the order of appointment contained; and whereas the said party of the second part has given and filed the requisite security, pursuant to the rules and practice of the said court, and to the provisions of the said order;

Now, this indenture witnesseth that the said parties of the

first part, in obedience to the said order and in consideration of the premises aforesaid and of one dollar to each of them in hand paid by the said party of the second part, at or before the execution hereof, the receipt whereof is hereby acknowledged, have, and each of them has, conveyed, assigned, transferred, and delivered over, and by these presents do, and each of them does, convey, assign, transfer and deliver over unto the said party of the second part, under the direction of the said referee, testified by his approval indorsed hereon, all and every the stock in trade, good will, estate real and personal, chattels-real, moneys, outstanding debts, things in action, equitable interests, property, and effects whatsoever and wheresoever, of or belonging or due to the said firm, or to the said parties of the first part as partners therein, or in which the said firm, or they or either of them as such partners had any estate, right, title or interest at the time of filing the complaint in said action, to-wit, on the . . . day of . . . . . last; and also all deeds, writings, leases, muniments of title, books of account, papers, vouchers, and other evidences whatsoever relating or appertaining thereto;

To have and to hold the same unto him, the said party of the second part, as such receiver as aforesaid, and to his successors and assigns, subject to the order, direction, and control of the said . . . . . court. And for the better and more effectually enabling the said party of the second part, his successors and assigns, to recover and receive all or any part of the stock, estate, book-debts, property, choses in action, and effects hereby conveyed, assigned and transferred they, the said A . . . . B . . . . and C . . . . D . . . . have made and appointed, and by these presents do make and appoint the said R . . . . C . . . ., party of the second part, his successors and assigns, the attorney and attorneys of them, the said parties of the first part, in their names, or in his own name, to commence, continue, discontinue, and again bring, perfect, and carry out actions and suits against any persons or corporations, for or on account of all or any part of the said estate, stock, property, book-debts, choses in action or effects.

IN WITNESS WHEREOF the said parties of the first

part have hereunto set their hands and seals the day and year first above written.

Signed and delivered in  
the presence of:

[Two witnesses.]

[Acknowledgment.]

A.... B.... [Seal]

C.... D.... [Seal]

### 763. Notice of motion to instruct receiver.

[Title.]

PLEASE TAKE NOTICE that on the pleadings and all the papers and proceedings filed or served in this action, and on the petition of R.... C...., a copy of which is attached hereto [*or otherwise describe papers on which motion is based*] the undersigned will move the court, at a special term to be held at ..... on the .... day of ....., 19.., at .... o'clock in the .... noon, or as soon thereafter as counsel can be heard, for an order directing the receiver heretofore appointed in this action [*here specify what directions are sought, e. g. thus: to proceed in the further discharge of his trust in disposing of the partnership property and effects; and that he be authorized and directed to sell the entire stock in trade of said copartnership at private sale, to E.... F.... at the sum agreed upon, to-wit [stating terms] and take from him his endorsed notes for one-half of the purchase money, payable at, &c. [or otherwise state the authority desired]*] and for such further order as may be just.

Dated ....., 19..

L.... M....

Plaintiff's Attorney.

To N.... O....,  
Defendant's Attorney.

### 764. Receiver's petition for leave to sell real estate.

[Title.]

To the ..... court of .....

THE PETITION of R.... C...., receiver in this cause, shows:

I. That having been appointed by order of this court on the .... day of ....., 19.., receiver of [*briefly designate estate*] your petitioner gave the requisite bond, with sureties,

which was duly approved and filed, and he is now acting in the discharge of the said trust.

II. That it appears that the defendant is owner of certain real property known and described as follows: [*description of the premises, and state also what interest the defendant has in it, what incumbrances there are upon it, and its value*].

III. [*State reasons for asking a sale, e. g. thus:*] That your petitioner has found no goods, or chattels, or choses in action of the said C.... D...., out of which any money can be made by collection, suit, or sale; and the said land is the only available property.

WHEREFORE your petitioner asks an order allowing him, as such receiver, to sell by public auction, and convey, all the right, title and interest of the said C.... D.... of and in the said land; and that the said C.... D.... join in such deed if the purchaser require it; and for such other or further order as may be just.

R.... C...., Receiver.

[*Jurat.*]

### 765. Notice of receiver's motion for instructions as to distribution.

[*Title.*]

TAKE NOTICE that upon the petition, of which a copy is attached and served upon you, I shall apply to the ..... court, at ....., on the .... day of ....., 19.., at .... o'clock in the .... noon, for an order directing what course I am to take in reference to the uncollected notes and accounts, and the furniture in my possession, and also for an order directing a reference to take my accounts as receiver, and discharging me from liability, and also for an order determining your respective priorities, and my duties as to paying your various claims out of the surplus that may remain in my hands, or out of any other moneys that I may collect.

Dated ....., 19..

R.... C...., Receiver.

To [*name attorneys of all parties interested*].

### 766. Application of receiver to pay dividend.

[*Title.*]

And now comes R.... C...., the receiver appointed by



this court in this action, by order dated . . . . ., 19.., and respectfully shows to the court:

That the property which came to the hands of your petitioner by virtue of his receivership consisted of [*here state same in general terms*] and that your petitioner has realized therefrom by means of sales thereof up to the present time the sum of . . . . . dollars;

That schedule "A" attached hereto is a true list of the creditors of said [*name debtor*] [who have come in and are entitled to share in the avails of this suit; *or, in case of a general dividend, who have come to the knowledge of your petitioner, and the amount due to each*];

That, while there remains part of the said property not yet collected or converted into money, the sum above mentioned is now available for dividend.

YOUR PETITIONER PRAYS that he be ordered to make a dividend among such creditors as are entitled to share therein [and that he be authorized to notify them to make proof of their claims. *This last clause to be added if the dividend is to be generally among all the creditors.*]

R. . . . C. . . . , Receiver.

[*Verification.*]

### 767. Notice of motion to revoke appointment of receiver.

[*After recitals showing papers on which the motion is founded, and time and place of hearing, the object of the motion may be stated thus*]: that the said appointment of R. . . . C. . . . as receiver may be revoked; and that the court appoint a new receiver in this action, and take the requisite security.

### 768. Order revoking and appointing new receiver.

[*After recitals*]: That the order of this court dated . . . . ., 19.., appointing R. . . . C. . . . receiver in this action be, and the same is hereby revoked and set aside; and that J. . . . S. . . . of . . . . . be, and he is hereby appointed receiver in place of said R. . . . C. . . . with the usual powers of receivers [*here insert requirements as to security and statement of specific powers as in original order*].

### 769. Notice of motion to discharge receiver.

[*The object of motion may be stated thus*]: that R. . . . C. . . . ,

the receiver appointed in this action be discharged; and that on an accounting by him and a delivery of all property and other things held by him as such receiver, to be made as the court may direct, the bond entered into by him, the said receiver, and his sureties, may be vacated [and that the plaintiff may pay him, the said receiver, the sum of ..... dollars, reported due to him by the report of ..... dated the .... day of ....., 19.., pursuant to an order made in this cause the .... day of ....., 19..; and for the costs of this motion].

### 770. Affidavit to receiver's account.

[*Venue.*]

R.... C.... being first duly sworn, says that he is the receiver who makes the within and foregoing account; that said account is true and correct according to the best of his knowledge and belief; that it contains a full and correct statement of all moneys and property which came to his possession or control as such receiver, and of all moneys paid out by him, together with his vouchers therefor.

R.... C....

[*Jurat.*]

### 771. Notice of application for receiver (Iowa Ann. Code 1897 sec. 3822).

[*Title.*]

TAKE NOTICE that upon the verified petition in this action on file, and upon the affidavits of W.... X.... and Y.... Z...., copies of which are served herewith, the plaintiff will on the .... day of ....., 19.., at the hour of .... o'clock A. M., at ...., Iowa, make application to the Honorable R.... S.... judge of the district court [or to the district court] for the .... judicial district of Iowa, for the appointment of a receiver in the above entitled action.

Dated ....., 19..

A.... B...., Plaintiff.

To C.... D...., Defendant,  
and to N.... O...., his attorney.

By L.... M....,  
His Attorney.

**772. Order appointing receiver (Iowa Ann. Code 1897 sec. 3822).**

[Title.]

Upon reading the verified petition in this action and the affidavits of W.... X.... and Y.... Z...., filed herein, and on motion of L.... M...., plaintiff's attorney, after hearing N.... O...., counsel for defendant;

IT IS ORDERED that R.... C.... of ....., be and he hereby is appointed receiver of [*here specify property*].

That the said R.... C...., before entering upon the discharge of his duties, file a bond with the clerk, with sureties to be approved by him, in the penalty of ..... dollars, and take the oath prescribed by law.

Further ordered that upon the filing of such bond, and taking of such oath, such receiver shall be vested with the usual rights and powers of receivers under this court [*specify any peculiar powers bestowed, or directions given*].

Dated ....., 19..

R.... S...., Judge

**773. Bond of receiver (Iowa Ann. Code 1897 sec. 3823).**

KNOW ALL MEN by these presents that we, R.... C...., principal, and G.... H.... and J.... K...., sureties, are held and firmly bound unto C.... D...., in the penal sum of ..... dollars, lawful money of the United States, well and truly to be paid to them, and each of them, and their heirs, executors, administrators and assigns.

THE CONDITION of this obligation is such that, whereas the said R.... S.... was on the .... day of ....., 19.., appointed by the district court of the state of Iowa, in and for ..... county [*or by the judge of said court*] a receiver in an action pending in said court, wherein A.... B.... is plaintiff and C.... D.... is defendant; now, if the said R.... C.... shall and will, well and faithfully discharge his duties as such receiver, and obey the orders of the court in respect thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Dated at ....., 19..

R.... C....  
G.... H....  
J.... K....

[*Venue.*]

G.... H.... being first duly sworn says that he is a resident of the state of Iowa and a freeholder therein; that he owns absolutely in his own name and right the following described real estate in ..... county, Iowa, not claimed or occupied by him as a homestead, to-wit: [*describe land*] which is reasonably worth ..... dollars, encumbered ..... dollars, and that he is worth in real estate double the sum of ..... dollars exclusive of property exempt from execution.

G.... H....

[*Jurat.*]

[*Add a similar affidavit by the other surety.*]

Acknowledged before me and approved by me this .... day of ....., A. D. 19..

L.... M...., Clerk.

By N.... O....

Deputy.

**774. Receiver's oath (Iowa Ann. Code 1897 sec. 3823).**

[*Title.*]

[*Venue.*]

R.... C.... being duly sworn, says that he is the person who was appointed by order of this court, dated ....., 19.., receiver in the action of A.... B.... vs. C.... D...., now pending in said court, and that he will faithfully discharge his trust as such receiver to the best of his ability, so help him God.

R.... C....

[*Jurat.*]

**775. Plaintiff's undertaking on ex parte application for appointment of receiver (N. Dak. Rev. Codes 1905 sec. 5404; S. Dak. C. C. P. 1908 sec. 229).**

[*Title.*]

WHEREAS the above named plaintiff has made an *ex parte* application for the appointment of a receiver in this action; and whereas the court upon such application has required of the plaintiff an undertaking in the sum of ..... dollars with sureties, as provided by law;

NOW, THEREFORE, we, A.... B...., as principal, and G.... H...., farmer, of ....., and J.... K...., merchant of ....., in said county of ..... do hereby undertake, pursuant to the statute, in the sum of ..... dollars, that the said A.... B.... will pay to C.... D.... the defendant, all damages he may sustain by reason of the appointment of such receiver and the entry by said receiver on his duties in case the said A.... B.... shall have procured such appointment wrongfully, maliciously, or without sufficient cause.

Dated ....., 19..

A.... B....

G.... H....

In presence of:

J.... K....

[*Two witnesses.*]

[*Acknowledgment and justification of sureties.*]

The above undertaking approved as to form and sufficiency of sureties.

R.... S....

Judge.

**776. Receiver's oath (N. Dak. Codes 1905 sec 5405; S. Dak. C. C. P. 1908 sec. 230).**

[*Title.*]

[*Venue.*]

R.... C.... being duly sworn, says that he will perform the duties of receiver in the above entitled action faithfully and to the best of his ability, so help him God.

R.... C....

[*Jurat.*]

**777. Receiver's undertaking (N. Dak. Rev. Codes 1905 sec. 5405; S. Dak. C. C. P. 1908 sec. 230).**

[*Title.*]

WHEREAS by order of said court, dated on the .... day of ....., 19.., in the above entitled action R.... C...., of ....., was duly appointed receiver of [*here state the property*];

NOW, THEREFORE, we R.... C...., as principal, and G.... H...., farmer, of ....., and J.... K...., merchant of ....., as sureties, do hereby undertake and agree to and with the said C.... D.... [*or such other person as the court*



*or judge directs*] in the sum of ..... dollars [*sum to be fixed by the court or judge*] that the said R.... C.... will faithfully discharge his duties as receiver in said action, and obey all orders made by the court therein.

Dated ....., 19..

R.... C....

G.... H....

J.... K....

In presence of:

[*Two witnesses.*]

[*Acknowledgment and justification.*]

[*Approval by court or judge.*]

**778. Notice of application for receiver (Neb. R. S. 1913 sec. 7811).**

[*Title.*]

To C.... D...., defendant above named.

Take notice that upon the petition in the above entitled action, duly verified and filed, and upon the affidavits of W.... X.... and Y.... Z...., copies of which are attached hereto and served herewith, the undersigned will apply to the ..... court of ..... county [*or to the Hon. R.... S...., judge of the ..... court*] at ..... in the city of ..... in said county, on the .... day of ....., 19.., or as soon thereafter as counsel can be heard, for an order in said action appointing R.... C.... as receiver of [*here state property*].

You will further take notice that G....H.... and J.... K.... of ..... are proposed as sureties for the said receiver, and M.... T.... and L.... T.... as sureties for the applicant.

Dated ....., 19..

A.... B...., Plaintiff,

By L.... M...., His Attorney.

**779. Order appointing receiver (Neb. R. S. 1913 secs. 7813-7816).**

[*Title.*]

The application by the plaintiff for the appointment of a receiver in this action having come on to be heard before the court [*or before the undersigned judge, &c.*] on the .... day of ....., 19.., upon the verified petition of the plaintiff, and the affidavits of W.... X.... and Y.... Z....

[*if upon any other papers name them*] it appearing that due notice of the hearing of said application has been served upon all parties to be affected thereby as required by law, and after hearing L.... M...., Esq., attorney for the plaintiff, and N.... O.... Esq., for the defendant, [*or, no one appearing for the defendant*];

ORDERED that R.... C...., Esq., of ....., be and he is hereby appointed receiver of [*here state the property*];

And further ordered that before said receiver shall enter upon his duties the said plaintiff give a good and sufficient bond, conditioned to pay all damages which the other parties to the suit or any of them may sustain by reason of the appointment of said receiver in case it shall finally be decided that this order ought not to have been granted, and the said R.... C.... shall give a bond conditioned to faithfully discharge his duties as receiver, and obey all orders of the court; each of which bonds shall run to the defendant and all adverse parties in interest, and be in the penal sum of ..... dollars [*double the value of the property in question*] with sureties as provided by law.

Further ordered that the said receiver be and he is hereby empowered and directed to [*here state particularly the powers and duties of the receiver*].

Dated ....., 19..

R.... S...., Judge.

[*Or, By the Court:*

R.... S...., Judge.]

### 780. Bond of applicant for appointment of receiver (Neb. R. S. 1913 sec. 7813).

KNOW ALL MEN by these presents that we, A.... B...., as principal, and G.... H...., farmer, of ....., and J.... K...., merchant, of ....., as sureties, are held and firmly bound unto C.... D...., defendant in the action of A.... B.... vs. C.... D...., and unto all adverse parties in interest, in the penal sum of ..... dollars, lawful money of the United States, well and truly to be paid to them and each of them, their heirs, executors, administrators and assigns.

THE CONDITION of this obligation is such that, whereas, upon the application of said A.... B...., plaintiff, in the action of A.... B.... vs. C.... D.... now pending in the

district court of ..... county, R.... C....., of ....., has been appointed receiver of [*here state the property*];\*

Now, therefore, if the said A.... B.... shall pay all damages which the other parties to said suit or any of them, may sustain by reason of the appointment of said receiver in case it shall finally be decided that the order appointing said receiver ought not to have been granted, then this obligation shall be void; otherwise of force.

Dated ....., 19..

A.... B.... [Seal]

In presence of:

G.... H.... [Seal]

[*Two witnesses.*]

J.... K.... [Seal]

[*Justification of sureties.*]

[*Approval as follows*]: The within bond and the sureties therein named are hereby approved.

R.... S...., Judge.

### 781. Bond of receiver (Neb. R. S. 1913 sec. 7813).

[*Proceed as in last preceding form, inserting, however, the name of the receiver as principal in place of the plaintiff, to the \*, then continue as follows*]:

Now, therefore, if the said R.... C.... shall faithfully discharge his duties as such receiver and obey all orders of the court, then this obligation shall be void otherwise of force.

Dated ....., 19..

R.... C.... [Seal]

In presence of:

G.... H.... [Seal]

[*Two witnesses.*]

J.... K.... [Seal]

[*Justification and approval as in last preceding form.*]

## CHAPTER XVI.

### NE EXEAT.

- |  |  |
|--|--|
| 782. Petition for writ of ne exeat (Wisconsin).              | 786. Writ of ne exeat.   |
| 783. Affidavit of third party in corroboration of plaintiff. | 787. Direction as to amount of bond, to be endorsed on the writ (Wisconsin). |
| 784. Bond by plaintiff accompanying the petition.            | 788. Defendant's bond for discharge (Wisconsin).                             |
| 785. Order granting writ (Wisconsin).                        |  |

The writ of *ne exeat* is very ancient and is purely an equitable remedy and not to be resorted to in an action at law. It is now little used. Doubtless all courts endowed with general equity and common law jurisdiction have power to issue it when a proper case is made, unless the right to the writ has been directly or indirectly abolished.<sup>1</sup> In Wisconsin the practice is regulated by statute [Wis. Stats. 1913 secs. 2784-2786] but the remedy is still only to be used in cases where it was authorized by the common law. The forms following are specially adapted to the Wisconsin practice, but are in substance such as may be used at common law in the absence of statutory regulations.

In case the party against whom the writ is issued does not choose to give the bond required he may move for discharge of the writ on a showing by answer or affidavits that there is no legal reason for its issuance, or he may give bond to the satisfaction of the officer granting the writ to abide and perform the judgment.<sup>2</sup>

<sup>1</sup> 29 Cyc, 382 *et seq.* In the following states as in Wisconsin, the remedy is still recognized by statute: Colo. Code Ann. 1911 sec. 469; Minn. Gen. Stats. 1913 sec. 145; Wash. Rem. and Bal. Code 1910 sec. 778. It has been abolished in the following states: Ark. Dig. of Stats. 1904 sec. 5990; Cal. C. C. P. 1906 sec. 478; Idaho Rev. Codes 1908 sec. 4240; Kans.

Gen. Stats. 1909 sec. 5740; Mont. Rev. Codes 1907 sec. 6595; N. Dak. Rev. Codes 1905 sec. 6889; S. Dak. C. C. P. 1903 sec. 156; Oregon Laws 1910 sec. 403; Utah Comp. Laws 1907 sec. 3010; Wyo. Comp. Stats. 1910 sec. 4817.

<sup>2</sup> Wis. Stats. 1913 sec. 2786; Griswold vs. Hazard, 141 U. S. 260; 11 S. Ct. 972, 999.

**782. Petition for writ of ne exeat (Wis. Stats. 1913 sec. 2784).**

[Title.]

To the ..... Court of ..... County.

A.... B.... the plaintiff above named by this, his verified petition, respectfully shows to the court and alleges that the said action is an action in equity for the dissolution of a copartnership heretofore existing between plaintiff and defendant, and to obtain an accounting and settlement of the copartnership affairs [*or state briefly nature of action*] as more fully appears from the plaintiff's verified complaint in this action, of which a true copy is attached hereto and submitted herewith; that the above named defendant is, as petitioner is informed and believes, about to dispose of his property and convert the same into money and depart from this state with the intent of defeating the plaintiff's claim herein.

That [*here state any facts showing such intent within plaintiff's knowledge, such as threats by defendant to depart from the state with his property, or any transfer of property already made*]; and petitioner verily believes that unless stayed by the order of this court the defendant will at once depart from this state with his property and thus render ineffectual any judgment which the plaintiff may recover herein.

Your petitioner presents herewith as a part of this, his petition, a bond executed by himself and two sufficient sureties, in favor of said defendant and conditioned to reimburse him the said defendant for all damages and costs sustained by him in case of the wrongful suing out of the said writ.

WHEREFORE your petitioner prays that said bond be approved and that a writ of *ne exeat* issue out of this court to prevent the said C.... D.... from going out of the state until he shall give security; and for such other and further relief as may be just.

A.... B....

[*Verification as in case of a pleading.*]

**783. Affidavit of third party in corroboration of plaintiff.**

[Title of court and of cause.]

[Venue.]

E.... F.... being duly sworn, says that he is a resident



of . . . . ., and of lawful age; that he knows the plaintiff and defendant in the above entitled action; that he is in no wise interested in said action; that he heard the defendant say on or about . . . . ., 19.., that he was about to move out of the state, and to the state of . . . ., as quick as he could sell out and dispose of his property; and that the plaintiff could never collect any judgment out of him [*or state facts within knowledge of the affiant showing the defendant's intention to defeat the plaintiff's action by disposal of property and removal from the state*].

E.... F....

[*Jurat.*]

#### 784. Bond by plaintiff accompanying the petition.

[*Title.*]

[*The bond may follow Form 788 substituting however the following conditions*]:

WHEREAS the above bounden A.... B.... is about to apply for the issuance of a writ of *ne exeat* in the above entitled action against the defendant C.... D....;

NOW THE CONDITION hereof is such that if the said A.... B.... shall reimburse the said defendant C.... D.... for such damages and costs as he may sustain in case the suing out of said writ shall be adjudged to be wrongful then this obligation to be void, otherwise of force.

[*Endorse upon the bond an approval by the officer issuing the writ as follows*]: The within bond approved both as to amount and sufficiency of sureties.

J.... K....,  
Judge.

#### 785. Order granting writ (Wis. Stats. 1913 sec. 2785).

[*Title.*]

Upon the verified complaint herein, and the affidavits of the plaintiff and E.... F...., by which it satisfactorily appears that this is an action in which a writ of *ne exeat* may properly be issued, and that sufficient grounds exist therefor; the plaintiff having executed and filed a bond with sufficient sureties for the payment to the defendant of his costs and damages in case of the wrongful suing out of the writ.

On motion of G.... H...., plaintiff's attorney;

IT IS ORDERED that such writ be granted and issue out of said court, and that there be endorsed thereon a direction that the penalty of the bond to be given by the defendant be the sum of . . . . . dollars, with at least two sureties, who shall make and file with such bond an affidavit in which each shall make oath that he is worth the sum of . . . . . dollars in property within this state, over and above his debts and liabilities, and exclusive of all property exempt from execution.

Dated at . . . . . this . . . . . day of . . . . ., 19..

J. . . . K. . . . ,  
Circuit Judge.

### 786. Writ of ne exeat.

THE STATE OF WISCONSIN,

to the sheriff of . . . . . County

Greeting:

Whereas it satisfactorily appears that an action has been commenced and is now pending in the circuit court for said county by A. . . . B. . . . , plaintiff, against C. . . . D. . . . , defendant, for dissolution of a partnership heretofore existing between said parties, and an accounting [*or otherwise briefly state the nature of the action*] and that said action is one in which a writ of *ne exeat* may properly be issued;

And, whereas it further appears that said defendant intends soon to depart from this state and to take therefrom and beyond the jurisdiction of the court, aforesaid, all his money, effects and property, so as to render ineffectual any judgment that the said plaintiff may recover against him, and with such purpose:

NOW, THEREFORE, you are hereby commanded, without delay to cause the said C. . . . D. . . . to come personally before you and give a sufficient bond, in the sum of . . . . . dollars, that he will not go, nor attempt to go, into parts without this state, without leave of our said court, and in case he shall refuse to give such bond, then you are commanded to commit the said C. . . . D. . . . , defendant, to the common jail of your said county, there to be kept in safe custody until he shall give such bond. And when you have taken such bond, you are forthwith to return this writ with your doings therein, and the said bond, to the court.

[SEAL]

WITNESS the Hon. J.... K....,  
judge of said court, at the court  
house in the city of ..... in said  
county, this .... day of .....,  
19..

O.... P...., Clerk.

**787. Direction as to amount of bond, to be endorsed on the writ (Wis. Stats. 1913 sec. 2785).**

To R.... S...., Sheriff of ..... County.

Pursuant to order granting this writ, require C.... D...., defendant, to give security in the sum of ..... dollars, by bond in such penal sum, with two sureties, who shall each make affidavit to the effect that he is worth in the aggregate the sum of ..... dollars over and above debts and liabilities in property within this state, and exclusive of all property exempt from execution.

O.... P...., Plaintiff's Attorney,  
....., Wis.

**788. Defendant's bond for discharge (Wis. Stats. 1913 secs. 2785, 2786).**

[Title.]

KNOW ALL MEN that we, C.... D...., principal, and L.... M.... and N.... O...., sureties, all of ..... county, Wisconsin, are held and firmly bound unto R.... S...., the sheriff of ..... county, in the penal sum of ..... dollars, lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

WHEREAS the above bounden C.... D.... by virtue of a writ of *ne exeat* issued out of the circuit court in and for the county of ..... in the state of Wisconsin, in an action now pending in said court, wherein A.... B.... is plaintiff, and the said C.... D.... is defendant, is now in custody of the sheriff, and required to give security as said writ directs.

NOW, THE CONDITION hereof is such that if the said C.... D.... shall not go, nor attempt to go out of this state, without leave of said court, or until said writ be duly

discharged, then this obligation to be void; otherwise of force.

	C....	D....	[Seal]
Signed, sealed and delivered	L....	M....	[Seal]
in the presence of:	N....	O....	[Seal]
	W....	X....	
	Y....	Z....	

*[Add justification and approval of bond by officer granting the writ.]*

**PART II**  
**FORMS OF COMPLAINTS**





## CHAPTER XVII.

### FORMAL PARTS OF COMPLAINTS OR PETITIONS.

- |  |  |
|--|--|
| <p>789. Outline form of complaint (or petition).</p> <p>790. The same, stating several causes of action.</p> <p>791. Stating part of second cause of action, by reference.</p> <p>792. Against one defendant severally liable, others not served.</p> <p>793. Where judgment has been had against a defendant.</p> | <p>794. Statement of reason for making party defendant instead of plaintiff.</p> <p>795. Amended complaint.</p> <p>796. Supplemental complaint.</p> <p>797. Allegation of statute law of another state.</p> <p>798. Allegation of common law of another state.</p> |
|--|--|

#### 789. Outline form of complaint, or petition.

STATE OF.....  
In ..... Court for .... County

<p>[Names of all the plaintiffs], Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>[Names of all the defendants], Defendants.</p>		<p>[In Iowa add: ..... term 19.. Petition at Law, or Petition in Equity]</p>
--	--	--

The plaintiff complains of defendant and alleges:

I. [*Here state concisely the facts constituting the cause of action, stating each fact separately, in numbered paragraphs, and mark each folio.*]

WHEREFORE the plaintiff [or plaintiffs] demands judgment against the defendant [or defendants] for the sum of ..... dollars and .... cents, together with interest thereon from the .... day of ....., 19.., [*or when the action is for the recovery of sums which becomes payable at different times, say: with interest on ..... dollars thereof, from the .... day of ....., 19.., and with interest on ..... dollars thereof, from the .... day of ....., 19..,*] together with the costs of this action.

*[Signature and address of plaintiff, if appearing in person, or signature and office and post office address of plaintiff's attorney.]*

*[Verification.]*

**790. The same, stating several causes of action.**

*[Title.]*

The plaintiff complains of the defendant and alleges:

*First:* For a first cause of action,

I. That, *etc., etc., etc.*

*Second:* And for a second cause of action,

I. That, *etc., etc., etc.*

**791. Stating part of second cause of action, by reference.**

*Second:* For a second cause of action,

I. The plaintiff repeats and realleges as a part of this cause of action, all the allegations contained in paragraphs . . . . , and . . . . of the first cause of action.

**792. Against one defendant severally liable, others not served.**

The plaintiff suggesting to the court that the summons in this action has not been served upon the defendant W . . . . X . . . . named therein, complains against the defendant Y . . . . Z . . . . and alleges:

**793. Where judgment has been had against a defendant.**

The plaintiff, suggesting to the court that the summons in this action has been served on the defendant, W . . . . X . . . . , but that he has not appeared, and that by reason thereof judgment has been taken against him, in respect of the premises, thereupon complains against the defendant Y . . . . . Z . . . . , and alleges:

**794. Statement of reason for making party defendant instead of plaintiff.**

That the defendant Y . . . . Z . . . . is jointly interested with plaintiff [*state in what way, e. g., as co-trustee with the plaintiff*] in the aforesaid cause of action; that before bringing this action plaintiff requested said defendant to join as a co-

plaintiff herein, but he refused so to do, and therefore is made a defendant.

**795. Amended complaint.**

[*Title.*]

The plaintiff by this, his amended complaint [*or petition*], alleges:

[*Set forth cause of action as in an original pleading.*]

**796. Supplemental complaint.**

[*Title.*]

The plaintiff, for his supplemental complaint herein served under and pursuant to an order of this court duly made, dated on the . . . day of . . . . ., 19.., to which reference is hereby made, alleges:

[*Set forth new and additional facts.*]

**797. Allegation of statute law of another state.**

I. That by chapter . . . . of the general laws of the state of . . . . . approved . . . . . 19.. it is provided as follows: [*set forth statute in full or such sections as pertain to the cause of action.*]

II. That since the passage and approval of said act the same has been and is now in full force in said state [*if the same has received judicial construction there add* and that the supreme court of said state, being the court of last resort in said state, in the case of . . . . . held and still holds [*state the holding*].

**798. Allegation of common law of another state.**

That at the times hereinafter [*or hereinbefore*] stated it was the common law of the state of . . . . . that [*state the principle fully*].

## CHAPTER X v III.

### VERIFICATIONS.

- |  |  |
|--|--|
| 799. Verification on knowledge, common form by sole party.                                   | 814. Verification by agent or attorney (Iowa).   |
| 800. The same, partially on information and belief.  | 815. Verification by person knowing the facts (Iowa).                                    |
| 801. Verification by attorney in action on written instrument in his possession (Wisconsin). | 816. Verification by officer or agent or corporation (Iowa).                             |
| 802. The same, by attorney personally knowing the facts (Wisconsin).                         | 817. Verification by one of several parties united in interest (Iowa).                   |
| 803. Verification by agent (Wisconsin).  | 818. Verification by party (Kansas and Oklahoma).  |
| 804. Verification by one of several parties united in interest (Wisconsin).                  | 819. Verification by agent or attorney (Kansas and Nebraska).                            |
| 805. Verification by two parties pleading together (Wisconsin).                              | 820. Verification by party (Minnesota).  |
| 806. Verification by officer of a corporation (Wisconsin).                                   | 821. The same, by attorney (Minnesota).  |
| 807. Verification of complaint in action where equitable relief is prayed (Arizona).         | 822. Verification by one of several parties united in interest (Minnesota).              |
| 808. Verification of pleading (Arkansas).  | 823. Verification by officer of corporation (Minnesota).                                 |
| 809. Verification of complaint by one of several plaintiffs (Arkansas).                      | 824. Verification by agent or attorney (Montana).  |
| 810. Verification of answer by one of several defendants (Arkansas).                         | 825. Verification by party (North and South Dakota).                                     |
| 811. Verification on behalf of a corporation (Colorado).                                     | 826. Verification by one of several parties united in interest (North and South Dakota). |
| 812. Verification by party (Iowa).   | 827. Verification by officer of corporation (North and South Dakota).                    |
| 813. Verification by agent or attorney, in action on instrument in writing (Iowa).           | 828. Verification by agent or attorney (North and South Dakota).                         |
|  | 829. Verification (Oregon and Washington).   |
|  | 830. Verification (Wyoming).   |

Most of the western codes of procedure follow with more or less fidelity the original Field Code in their provisions with



regard to the verification of pleadings. The first eight forms given in this chapter will be found to answer the requirements in a majority of the states covered by this work. Special forms have been added covering cases where it seems that the statute of a given state has made any substantial variation from the ordinary requirements.

**799. Verification on knowledge, common form by sole party.**

[*Venue.*]

A.... B.... being first duly sworn, says that he is the plaintiff [*or defendant*] in the above entitled action; that he has read the foregoing complaint [*or answer, or reply*] and knows the contents thereof, and that the same is true to his own knowledge.

A.... B....

Subscribed and sworn to before  
me this .... day of ....., 19..

C.... D....,  
Notary Public, Wis.

**800. The same, partially on information and belief.**

[*Venue.*]

A.... B.... being first duly sworn, says that he is the plaintiff [*or defendant*] in the above entitled action; that he has read the foregoing complaint [*or answer, or reply*] and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

A.... B....

[*Jurat.*]

**801. Verification by attorney in action on written instrument in his possession (Wis. Stats. 1913 sec. 2666, *Closson vs. Chase* 158 Wis. 346).**

[*Venue.*]

A.... B.... being duly sworn, says that he is the attorney for the plaintiff in the above entitled action; that he knows the contents of the foregoing complaint and that he believes

the same to be true. Deponent further says that the reason why this verification is not made by the plaintiff is that the action is founded upon a written instrument for the payment of money only and such instrument is in the possession of deponent, which said instrument forms the sources of deponent's information and the grounds of his belief [together with admissions made by defendant to this deponent, *or state other sources of knowledge if any*].

A.... B....

[*Jurat.*]

**802. The same, by attorney personally knowing the facts  
(Wis. Stats. 1913 sec. 2666).**

[*Venue.*]

E.... F.... being first duly sworn, says that he is the attorney for the plaintiff in the above entitled action; that he knows the contents of the foregoing complaint, and that the same is true to his own knowledge.

That the reason this verification is not made by the plaintiff is, that the plaintiff is not now in ..... county, where the affiant resides; and that all the allegations of the said complaint are within the personal knowledge of the affiant.

E.... F....

[*Jurat.*]

**803. Verification by agent (Wis. Stats. 1913 sec. 2666).**

[*Venue.*]

G.... H.... being first duly sworn, says that he is the agent for the above named plaintiff, and was such agent in relation to the business out of which the cause of action set forth in the above complaint arose; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge; that the reason this verification is not made by the plaintiff is that he is not now in the county of ....., where the plaintiff's attorney resides, and that all the material allegations of the said complaint are within the personal knowledge of affiant.

G.... H....

[*Jurat.*]

**804. Verification by one of several parties united in interest (Wis. Stats. 1913 sec. 2666).**

[*Venue.*]

A.... B.... being first duly sworn, says that he is one of the plaintiffs [*or* defendants] in the above entitled action; that he has read the foregoing complaint [*or* answer, *or* reply] and knows the contents thereof; that he is acquainted with the facts alleged in said complaint [*or* answer] and that the same is true to his own knowledge except as to those matters therein alleged on information and belief, and as to those matters he believes it to be true; and further affiant says that he is united in interest in this action with his co-plaintiffs [*or* co-defendants].

A.... B....

[*Jurat.*]

**805. Verification by two parties pleading together (Wis. Stats. 1913 sec. 2666).**

[*Venue.*]

A.... B.... and C.... D...., being each first duly sworn, each for himself says that he is one of the plaintiffs [*or* defendants] in the above entitled action; and that the foregoing complaint [*or* answer, *or* reply], which he has read and of which he knows the contents, is true to his own knowledge, except as to those matters therein alleged upon information and belief, and as to those matters he believes it to be true.

A.... B....

C.... D....

[*Jurat.*]

**806. Verification by officer of a corporation (Wis. Stats. 1913 sec. 2666).**

[*Venue.*]

A.... B.... being first duly sworn, says that he is the president [*or other officer*] of the A.... B.... Company, the plaintiff [*or* defendant] in the above entitled action, and that the said A.... B.... Company is a corporation, that he has read the foregoing complaint [*or* answer, *or* reply] and that the same is true to his own knowledge [except as to those matters therein alleged on information and belief, and as to those matters he believes it to be true].

807. Verification of complaint in action where equitable relief is prayed (Ariz. R. S. 1913 sec. 477).

[Venue.]

A.... B.... being duly sworn says that he is the plaintiff in the above entitled action; that he has read the foregoing complaint and that the allegations thereof are true in substance and in fact.

A.... B....

[Jurat.]

808. Verification of pleading (Ark. Dig. of Stats. 1904 secs. 6120, 6121).

[Venue.]

A.... B.... being duly sworn says he is the plaintiff [or defendant] in the above entitled action; that he has read the foregoing complaint [or answer] and that he believes the statements thereof to be true. *[If the verification be made by an officer, agent or attorney of a corporation the verification should state the fact that he is such officer, agent or attorney, and if he be an officer or agent should also show that he is an officer or agent on whom a summons may be served.]*

A.... B....

[Jurat.]

809. Verification of complaint by one of several plaintiffs (Ark. Dig. of Stats. 1904 sec. 6122).

[Venue.]

A.... B.... being duly sworn says he is one of the plaintiffs in the above entitled action; that he has read the foregoing complaint and has personal knowledge of the facts set forth therein, and that he believes the statement thereof to be true.

A.... B....

[Jurat.]

810. Verification of answer by one of several defendants (Ark. Dig. of Stats. 1904 sec. 6122).

[Venue.]

C.... D.... being duly sworn says he is one of the defendants in the above entitled action and joins in the fore-

going answer; that he has read said answer and that the facts and statements contained in said answer and defense are true to his own knowledge and belief; and further that he is materially interested in the said action and in the establishment of the foregoing defense thereto.

C.... D....

[*Jurat.*]

**811. Verification on behalf of a corporation (Colo. Code Ann. 1911 sec. 63).**

[*Venue.*]

A.... B.... being duly sworn says that the plaintiff [*or* defendant] is a corporation, and that affiant is an officer, to-wit, the president [*or* secretary] [*or* is a stockholder, agent, superintendent, *or* attorney] of said corporation; that he has read the foregoing complaint [*or* answer] and knows the contents thereof and that the facts stated therein are true to the best knowledge and belief of affiant.

A.... B....

[*Jurat.*]

**812. Verification by party (Iowa Ann. Code 1897 secs. 3580 et seq.).**

[*Venue.*]

A.... B.... being duly sworn, says that he is the plaintiff [*or* defendant] in the above entitled action; that the statements and allegations of the foregoing petition [*or* answer, *or* reply] have been read to him [*or* by him] and the same are true as he believes [and that the bill of particulars attached to said petition is just and true as he believes].

A.... B....

[*Jurat.*]

**813. Verification by agent or attorney, in action on instrument in writing (Iowa).**

[*Venue.*]

A.... B.... being duly sworn, says that he is the attorney [*or* agent] of the plaintiff in the foregoing petition [*or* answer]; that the promissory note [*or other instrument as the case may be*] set out in said petition [*or* answer] [*or annexed thereto*] is



in his possession as such attorney [*or agent*] and that the statements of said petition [*or answer*] are true as he believes. [*If the petition be an attachment action, add: And affiant further says that the facts alleged in said petition as grounds for the issuance of an attachment are known to him, and that said allegations are true.*]

A.... B....

[*Jurat.*]

#### 814. Verification by agent or attorney (Iowa).

[*Venue.*]

A.... B.... being duly sworn, says that he is the agent [*or attorney*] of the plaintiff [*or defendant*] in the foregoing petition [*or answer*] and knows its contents, and the statements and allegations therein contained are true as he believes; that affiant's knowledge of the truth of the facts therein stated is derived from the fact [*here set forth facts showing competency, as*]: that affiant had entire charge of the transactions set forth in said petition [*or answer*] as agent for the plaintiff [*or defendant*] and has personal knowledge of the facts, and that the plaintiff [*or defendant*] is a non-resident of the state and was not present when said transactions occurred; that affiant has better knowledge of the facts stated in said petition [*or answer*] than has the plaintiff [*or defendant*] himself.

A.... B....

[*Jurat.*]

#### 815. Verification by person knowing the facts (Iowa Ann. Code 1897 sec. 3584).

[*Venue.*]

A.... B.... being duly sworn, says that he has read the foregoing petition [*or answer*]; that he knows the facts therein alleged of his own personal knowledge, and that the statements of said petition [*or answer*] are true as he believes [*here set out the reason why the pleading is not verified by the party, and show competency of the one verifying*].

A.... B....

[*Jurat.*]

**816. Verification by officer or agent of corporation (Iowa Ann. Code 1897 sec. 3581).**

[*Venue.*]

A. . . . B. . . . being duly sworn says that he is the president [*or other officer*] [*or the duly authorized agent*] of the A. . . . B. . . . Company, the plaintiff [*or defendant*] in the above entitled action, and has read the foregoing petition [*or answer*] and knows the contents thereof, and that the statements therein contained are true as he believes [*here state facts showing competency*].

A. . . . B. . . .

[*Jurat.*]

**817. Verification by one of several parties united in interest (Iowa Ann. Code 1897 sec. 3582).**

[*Venue.*]

A. . . . B. . . . being duly sworn, says he is one of the plaintiffs [*or defendants*] in the above entitled action, and is united in interest with his co-plaintiffs [*or co-defendants*] and makes this affidavit on behalf of himself and his co-plaintiffs [*or co-defendants*]; that he has read the foregoing petition [*or answer*] and knows the contents thereof, and that the statements therein contained are true as he believes.

A. . . . B. . . .

[*Jurat.*]

**818. Verification by party (Kans. Gen. Stats. 1909 sec. 5706; Neb. R. S. 1913 sec. 7687; Okla. Comp. laws 1909 sec. 5651).**

[*Venue.*]

A. . . . B. . . . being duly sworn, says he is the plaintiff [*or defendant*] in the above entitled action, and has read the foregoing petition [*or answer, or reply*] and knows the contents thereof, and that he believes the facts stated therein to be true.<sup>1</sup>

A. . . . B. . . .

[*Jurat.*]

<sup>1</sup> It is suggested by Mr. Maxwell in his Code Pleading that if the pleading is to be used as an affidavit for an injunction or mandamus or the like, the

verification should be to the effect that "the facts stated in said petition are true."

319. Verification by agent or attorney (Kans. Gen. Stats. 1909 sec. 5709; Neb. R. S. 1913 sec. 7691; Okla. Comp. Laws 1909 sec. 5654).

[Venue.]

A.... B.... being duly sworn, says he is the agent [or attorney] of C.... D.... the plaintiff [or defendant] in the above entitled action, and that he has read the foregoing petition [or answer, or reply] and knows the contents thereof, and that the facts therein stated are true as he believes; that the reason why this affidavit is not made by the plaintiff [or defendant] himself is because the facts are within the personal knowledge of affiant as such agent [or attorney]. [Or: that the plaintiff is an infant, or of unsound mind, or imprisoned; or: that the petition, or answer is founded upon a written instrument for the payment of money only, and such instrument is in my possession; or: that the plaintiff, or defendant, is absent from . . . . county, or is not a resident thereof; or, that the plaintiff, or defendant, is a corporation, and that affiant is the president, or other officer or agent, of said corporation, upon whom a summons could be legally served].

A.... B....

[Jurat.]

820. Verification by party (Minn. Gen. Stats. 1913 sec. 7768).

[Venue.]

A.... B.... being duly sworn, says that he is the plaintiff [or one of the plaintiffs, or defendant, or one of the defendants] in the above entitled action; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A.... B....

[Jurat.]

821. The same, by attorney (Minn. Gen. Stats. 1913 sec. 7768).

[Venue.]

E.... F.... being duly sworn, says that he is the attor-

ney [or agent] for the plaintiff [or defendant] in the above entitled action; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof; that the same is true to the best of his knowledge, information and belief; that the reason why this verification is not made by the plaintiff is that he is absent from the county of . . . . . wherein the plaintiff's [or defendant's] attorney resides.

E. . . . F. . . .

[*Jurat.*]

**822. Verification by one of several parties united in interest (Minn. Gen. Stats. 1913 sec. 7768).**

[*Venue.*]

A. . . . B. . . . being duly sworn, says that he is one of the plaintiffs [or one of the defendants] in the above entitled action, and is united in interest with his co-plaintiffs [or with his co-defendants]; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof, and is acquainted with the facts therein alleged, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A. . . . B. . . .

[*Jurat.*]

**823. Verification by officer of corporation (Minn. Gen. Stats. 1913 sec. 7768).**

[*Venue.*]

A. . . . B. . . . being duly sworn, says that he is the president [or other officer] of the A. . . . B. . . . Company, plaintiff [or defendant] in the above entitled action; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

A. . . . B. . . .

[*Jurat.*]

**824. Verification by agent or attorney (Mont. Rev. Codes 1907 sec. 6565).**

[*Venue.*]

A. . . . B. . . . being duly sworn says that he is the agent

[or attorney] for the plaintiff within named, [or that the plaintiff within named is a corporation and that affiant is an officer, to-wit, the president of said corporation]; that the reason why this verification is made by affiant is that the said plaintiff is absent from the county where his attorney [naming him] resides [or state any other sufficient cause why the party is unable to verify the pleading himself, as, for instance, serious illness]; that the matters stated in said complaint are true to the best knowledge, information and belief of this affiant.

A.... B....

[Jurat.]

[If the party is a corporation omit any statement of the reason why the verification is made by the officer; the fact that it is a corporation constitutes the reason in that case.]

**825. Verification by party (N. Dak. Rev. Codes 1905 sec. 6867; S. Dak. C. C. P. 1908 sec. 134).**

[Venue.]

A.... B.... being duly sworn, says he is the plaintiff, [or defendant] in the above entitled action; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

A.... B....

[Jurat.]

**826. Verification by one of several parties united in interest (North Dakota and South Dakota).**

[Venue.]

A.... B.... being duly sworn, says he is one of the plaintiffs [or defendants] in the above entitled action, and is united in interest with his co-plaintiffs [or, co-defendants] and makes this affidavit on behalf of himself and his said co-plaintiffs [or, co-defendants]; that he has read the foregoing complaint [or answer, or reply] and knows the contents thereof, and is acquainted with the facts therein stated, and that the same is true to the knowledge of affiant, except as to



those matters herein stated upon information and belief, and as those matters he believes it to be true.

A.... B....

[*Jurat.*]

**827. Verificaton by officer of corporation (North Dakota and South Dakota).**

[*Venue*]

A.... B.... being duly sworn, says he is the president [*or other officer*] of the A.... B.... Company, the corporation plaintiff [*or defendant*] in the above entitled action, and makes this affidavit on its behalf; that he has read the foregoing complaint [*or answer, or reply*] and knows the contents thereof, and that the same is true to the knowledge of affiant except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

A.... B....

[*Jurat.*]

**828. Verification by agent or attorney (North Dakota and South Dakota).**

[*Venue.*]

A.... B.... being duly sworn, says he is the agent [*or attorney*] of the above named plaintiff [*or defendant*] and makes this affidavit on his behalf; that he has read the foregoing complaint [*or other pleading*] and knows the contents thereof, and that the same is true to the best knowledge, information and belief of affiant; that the reason why this verification is not made by the plaintiff [*or defendant*] himself is that said party is absent from ..... county, in which his attorney resides [*or, that said party is not a resident of ..... county, in which his attorney resides*].

A.... B....

[*Jurat.*]

**829. Verification (Oregon laws 1910 sec. 821; Wash. Rem. and Bal. Code 1910 sec. 281).**

[*Venue.*]

A.... B.... being duly sworn, on oath says, that he is the plaintiff [*or the agent or attorney of the plaintiff*] named in the foregoing complaint that he has read the same, knows

the contents thereof and believes it to be true. That he makes this affidavit because [*here set forth the reason why the verification is made by the agent or attorney, if such be the fact, as for instance*], the said plaintiff is not within the said county of . . . . . [*county where the action is brought*] [*or state any other reason sufficient under the statute according to the fact*].

A. . . . B. . . .

[*Jurat.*]

[*When a corporation is a party, an officer on whom service can be made may verify the pleading, and in that case the affidavit should state that the party is a corporation and also what officer the affiant is.*]

[*In Washington the verification should be preceded by the following affidavit of counsel:*]

[*Venue.*]

L. . . . M. . . . being duly sworn, on oath says, that he is the attorney.. of record for the above named plaintiff in the above entitled action, has read the foregoing complaint, knows the contents thereof and believes the same to be meritorious and well founded in law.

L. . . . M. . . .

[*Jurat.*]

### 830. Verification (Wyo. Comp. Stats. 1910 sec. 4422).

[*Venue.*]

A. . . . B. . . . being duly sworn says that he is the plaintiff [*or the agent or attorney of the plaintiff*] in the above entitled action, that he has read the foregoing complaint and knows the contents thereof and that he believes the facts therein stated to be true.

A. . . . B. . . .

[*Jurat.*]

[*If the party be a corporation, that fact should be stated and, if the verification be by an officer of the corporation, it should be stated what officer he is. If the party be the state, or a state official acting on behalf thereof, the person verifying should state that he is acquainted with the facts stated in the pleading.*]

## CHAPTER XIX.

### COMPLAINTS AND PETITIONS: ALLEGATIONS AS TO THE CHARACTER OR REPRESENTATIVE CAPACITY OF THE PARTIES.

- |  |   |
|--|---|
| 831. Plaintiff suing on behalf of himself and many others.   | 850. By or against a municipal corporation.                                     |
| 832. The same, by one creditor on behalf of all.   | 851. Complaint by administrator.  |
| 833. The same, by taxpayer suing to prevent illegal expenditure of public moneys.                          | 852. Complaint against administrator.   |
| 834. The same, by one stockholder of an unincorporated joint stock association.                            | 853. Complaint by executor.   |
| 835. One defendant sued as representative of others.   | 854. Against administrator with will annexed.                                   |
| 836. Action by assignee of a claim.  | 855. Complaint by administrator <i>de bonis non</i> .                           |
| 837. The same, alleging defendant's consent to assignment.   | 856. Allegation when executor refuses to join in an action.                     |
| 838. The same, alleging assignment in writing.   | 857. Against executor <i>de son tort</i> .                                      |
| 839. Allegation of assignment, in action brought in United States court, on ground of diverse citizenship. | 858. Complaint by foreign administrator.  |
| 840. Equitable assignment of part of fund to become due.   | 859. Husband and wife suing together.   |
| 841. By assignee for the benefit of creditors.   | 860. Against husband and wife, on wife's debt.                                  |
| 842. By substituted assignee for benefit of creditors.   | 861. The same, husband having acquired wife's separate property.                |
| 843. By assignee under state insolvent law.  | 862. The same, wife's property acquired after marriage.                         |
| 844. By foreign official assignee.   | 863. Complaint of infant plaintiff, suing by guardian <i>ad litem</i> .         |
| 845. By a devisee.   | 864. Allegations of diverse citizenship in actions in the United States courts. |
| 846. By heir at law.   | 865. The same, in action in equity.   |
| 847. By officer of unincorporated association (New York).  | 866. The same, by alien against citizen, in action at law.                      |
| 848. By or against domestic corporation.   | 867. Action by committee of lunatic, idiot, etc. (New York).                    |
| 849. By or against a foreign corporation.  | 868. Action against committee of a lunatic (New York).                          |

- |   |   |
|---|---|
| 869. Action by general guardian of insane or incompetent person (Wisconsin).<br>870. By married woman, relating to her separate estate.<br>871. The same, in action upon other than money contract.<br>872. Action by or against partners, common form.<br>873. By surviving partner.<br>874. By or against public officer.<br>875. By the state, upon information of the attorney-general (Wisconsin). | 876. The state, by its attorney-general on relation of a private person (Wisconsin).<br>877. By receiver, in supplementary proceedings.<br>878. By receiver appointed in an action.<br>879. By receiver of corporation in sequestration action.<br>880. Action by stockholder in the interest of the corporation, directors refusing to sue.<br>881. By parent for injury to minor child. |
|---|---|

### 831. Plaintiff suing on behalf of himself and many others.<sup>1</sup>

[Title of court.]

A.... B...., on behalf of himself and all others similarly situated, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> Y.... Z...., <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}
--	---

The plaintiff, on behalf of himself and all others similarly situated who shall come in and contribute to the expense of this action, complains of the defendant and alleges:

*[The allegations must show that the question is one of common and general interest to many persons, or that many others similarly situated are very numerous and that it is impracticable to join them all, e. g.]:*

<sup>1</sup> Wis. Stats. 1913 sec. 2604; Ariz. R. S. 1913 sec. 416; Ark. Dig. of Stats. 1901 sec. 6008; Cal. C. C. P. 1906 sec. 382; Colo. Code Ann. 1911 sec. 12; Idaho Rev. Codes 1908 sec. 4105; Iowa Ann. Code 1897 sec. 3464; Kans. Gen. Stats. 1909 sec. 5630; Minn. Gen. Stats. 1913 sec. 7674; Mont. Rev. Codes 1907 sec.

6491; Neb. R. S. 1913 sec. 7600; N. Dak. Rev. Codes 1905 sec. 6818; S. Dak. C. C. P. 1908 sec. 89; Okla. Comp. Laws 1909 sec. 5570; Oregon Laws 1910 sec. 391; Utah Comp. Laws 1907 sec. 2917; Wash. Rem. and Bal. Code 1910 sec. 190; Wyo. Comp. Stats. 1910 sec. 4326.

I. That the question which is the subject of this action is one of common and general interest to all [the stockholders of the said defendant corporation].

II. That, as plaintiff is informed and believes, the holders and owners of stock are very numerous and exceed . . . . .<sup>2</sup> in number, and many of them are not residents of this state, and the names of some of them are unknown to the plaintiff and cannot with due diligence be ascertained by him; and it is, therefore, impracticable to bring them all before the court.

III. [*Set forth cause of action.*]

### 832. The same, by one creditor on behalf of all.

[*Title as in last preceding form.*]

The plaintiff complaining on behalf of himself and all others, the creditors of M. . . . N. . . . who shall in due time come in and seek relief by, and contribute to the expenses of this action, alleges:

[*Set forth cause of action.*]

That the said creditors of M. . . . N. . . . are very numerous, to-wit, more than . . . . . in number, and that some of them are unknown to the plaintiff, and cannot with diligence be ascertained by him, and that it is impracticable therefore for him to bring them all before the court in this action; wherefore he sues for the benefit of himself and all of said creditors.

<sup>2</sup> It is held in Wisconsin that thirty-one persons are not too numerous to join (*George v. Benjamin* 100 Wis. 622; 76 N. W. 619), but that seventy-five is a sufficient number to justify one or more to sue for all (*Hodges v. Nalty*, 104 Wis. 464; 80 N. W. 726). The general equity rule independent of statute is that actions may be brought by one or more on behalf of others, in three classes of cases, viz: (1) Where the question is of a common or general interest, and one or more

sue or defend for the benefit of the whole; (2) where the parties constitute a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole; and (3) where the parties are very numerous, and though they have or may have separate and distinct interests, yet it is impracticable to bring them all before the court. *Story's Eq. Pl. sec. 97.*



833. The same, by taxpayer suing to prevent illegal expenditure of public moneys (*Webster v. Douglas Co., et al.*, 102 Wis. 181; 77 N. W. 885; 78 N. W. 451).

[*Title of court.*]

A.... B...., on behalf of  
himself and all other tax-  
payers of the county of

.....

Plaintiff,

vs.

The County of ....., and  
C.... D...., County  
Treasurer of said county,  
Defendants.

The plaintiff, on behalf of himself and all other taxpayers of the county of ....., complains of the defendants, and alleges:

I. That he is and was at the times hereinafter stated, a resident taxpayer of the said county of .....

II. [*Here set forth the cause of action.*]

III. That upon demand duly made by this plaintiff on the .... day of ....., 19.., the said county, by its officers refused to bring this action, wherefore this plaintiff on behalf of himself and all other taxpayers of said county prosecutes this action.

[*Prayer for judgment.*]

834. The same, by one stockholder of an unincorporated joint stock association (*Platt v. Calvin* 50 Ohio St. 703; 36 N. E. 735).

[*Title of court.*]

A.... B...., President and  
Stockholder of the L....

M.... Association,

Plaintiff,

vs.

Y.... Z....,

Defendant.

The plaintiff complains of the defendant, and alleges:

I. That the L.... M.... Association is a joint stock association, duly organized in the year 19.. under the laws of the state of ..... and ever since existing and doing business as such, and consists of about .... shareholders, owning .... shares, all of which persons have a joint ownership and interest in the cause of action hereinafter set forth, but are too numerous to be joined as parties plaintiff; and that the said A.... B.... is president of the said L.... M.... Association, and a stockholder therein; and as such brings this suit in behalf of said association, and all the stockholders thereof.

835. One defendant sued as representative of others.

[Title of court.]

<p>A.... B.....,</p> <p style="text-align: center;">vs.</p> <p>C.... D....., individually and as representative of all holders of the trust certificates hereinafter named. [Or otherwise describe class, according to the fact.]</p>	<p>Plaintiff,</p>
---	-------------------

The plaintiff complains of the defendant, and alleges:

I. That the [name the class, as: holders of said trust certificates] are more than .... in number, and a part of them are non-residents of this state [or unknown to the plaintiff] and that it is impracticable to bring them all before the court, wherefore the said C.... D.... is made defendant herein as representative of all of said [name the class].

836. Action by assignee of a claim.

[Title.]

The plaintiff complains of the defendant, and alleges:

I. [State cause of action accruing to the assignor.]

II. That on the .... day of ....., 19... [or, thereafter and before this action] the said A.... B... duly assigned the said claim [or instrument] to the plaintiff.

**837. The same, alleging defendant's consent to assignment.**

[Title.]

The plaintiff complains of the defendant, and alleges:

I. [*Set forth the making of the contract.*]\*

II. That thereafter said defendant duly gave his consent to said M. . . . N. . . . that he might assign said contract by an instrument in writing indorsed thereon [or signed, sealed, and delivered to him by defendant] a copy of which consent is annexed to this complaint as a part hereof and marked Exhibit B.

**838. The same, alleging assignment in writing.**

[*Proceed as in last preceding form to the \*.*]

II. That thereafter, and on or about the . . . . day of . . . . ., 19.., and before the commencement of this action said [assignor] for a valuable consideration duly assigned said claim [or name the instrument or cause of action] to the plaintiff, by an instrument in writing signed, [sealed] and delivered by him, a copy of which assignment is annexed to and made a part of this complaint, and marked Exhibit A.

**839. Allegation of assignment, in action brought in United States court, on ground of diverse citizenship.**

[Title.]

[*If in equity, insert address as in form 865.*]

I. [*Allege citizenship of parties as in forms 864, 865 and 866.*]

II. [*State cause of action accruing to assignor.*]

III. [*State assignment to plaintiff as in preceding forms, and continuing*] and that the said [assignor] was at the time of the commencement of this action a citizen of the state of . . . . .

**840. Equitable assignment of part of fund to become due.**

[Title.]

The plaintiff complains of the defendant, and alleges:

I. That on or about the . . . . day of . . . . ., 19.., the defendant Y. . . . Z. . . . and one M. . . . N. . . . entered into a

contract subscribed [and sealed] by them, of which the following is a copy: [*Insert copy of contract.*]

II. That on or about the . . . . day of . . . . ., 19.., the said M. . . . N. . . . , for value received, made and delivered to this plaintiff an order on said defendant, of which the following is a copy: [*Insert copy of order for payment of a sum out of proceeds.*]

III. That said order was thereupon presented to said defendant Y. . . . Z. . . . , who thereupon and for value received accepted said order, and then and there wrote thereon the following acceptance: [*Insert copy of acceptance.*]

IV. That thereafter, and on or about the . . . . day of . . . . ., 19.., said defendant had in his hands the sum of . . . . . dollars, proceeds of said contract applicable to payment of said order. [*Or if the order was conditioned, as, for instance, on performance of the contract, allege it according to the fact, as thus: That the time for completion of the performance of said contract was extended by written agreement between the parties thereto until the . . . . day of . . . . ., 19.., and thereafter said defendant approved and accepted the work mentioned in said contract, and subscribed and endorsed on said contract the following approval: [Insert copy of endorsement.]*]

V. That thereafter and before the commencement of this action the plaintiff duly demanded of the defendant payment of said order, but he refused payment thereof and there is now due and unpaid thereon the sum of . . . . . dollars, with interest thereon, etc.

[*Add prayer for judgment.*]

### 841. By assignee for the benefit of creditors.

[*Title of court.*]

<p>A. . . . B. . . . , as Assignee for the Benefit of Creditors of C. . . . D. . . . , Plaintiff, vs. E. . . . F. . . . , Defendant.</p>	}
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The plaintiff complains as assignee for the benefit of creditors of C.... D...., and alleges:

I. [*State facts showing cause of action in C.... D....*]

II. That on or about the .... day of ....., 19..., the said C.... D.... duly executed and delivered to this plaintiff an assignment of all the property of said C.... D...., including the cause of action herein set forth, in trust for the benefit of his creditors. That said assignment was duly acknowledged by the said C.... D...., and was in all respects duly executed and a copy thereof filed as required by law, and the same was duly accepted by the plaintiff, who thereupon gave the bond as required by law and duly qualified as such assignee, and made and filed the inventory as required by law, and ever since has been and is still such assignee. [*It is well to set forth fully compliance with all statutory requirements, especially in suits against creditors, in order to show a valid assignment.*]

#### 842. By substituted assignee for benefit of creditors.

[*Allege appointment and qualification of original assignee, as in last preceding form.*]

That thereafter, in proceedings duly had before Hon. I.... K...., judge of the ..... court for ..... county, an order was duly made by said judge, removing [or accepting the resignation of and discharging] said A.... B.... and appointing this plaintiff in his stead, and this plaintiff thereupon and before this action duly qualified as the assignee of the property of said C.... D.... in trust for the benefit of creditors, and entered upon his duties as such [and filed the inventory and bond required by law].

#### 843. By assignee under state insolvent law.

[*Title of court.*]

A.... B...., as Assignee of C.... D...., an In- solvent Debtor, Plaintiff,	}
---	---

vs.

E.... F...., Defendant.	}
----------------------------	---



The plaintiff complains as assignee of C.... D...., an insolvent debtor, and alleges:

I. [*Here set forth the facts showing a cause of action in C.... D....*]

II. That thereafter, in proceedings had before the Hon. I.... K...., judge of the ..... court, pursuant to [*state the title of the law or chapter governing insolvency proceedings*] an order was duly made by said judge [*here state the facts fully showing the terms of the order, the making of the assignment thereunder to the plaintiff, and the plaintiff's qualification as assignee.*]

[*If action is in United States court, on ground of different citizenship, set forth citizenship of assignor as well as that of parties.*]

#### 844. By foreign official assignee.

[*Title is in preceding forms.*]

The plaintiff complains as assignee for the benefit of creditors of C.... D...., and alleges:

I. That the laws of the state of ..... at the time of the proceedings hereinafter set forth did, and ever since have contained provisions, in [*citing chapter of the statutes*], that [*state material provisions of the statute, either in words or substance, governing and authorizing the plaintiff's appointment.*]

II. That on the .... day of ....., 19.. [*here set forth the proceedings showing plaintiff's appointment and qualification in compliance with the statute, as in preceding forms.*]

#### 845. By a devisee.

[*Title.*]

[*Formal commencement of complaint, and allegation of testator's ownership of the land in question.*]

II. That said M.... N.... died, on or about the .... day of ....., 19.., leaving a last will and testament, which was thereafter and on the .... day of ....., 19.., duly admitted to probate by the ..... court of the county of ..... and wherein and whereby said M.... N.... devised said premises in fee to the plaintiff.

**846. By heir at law.**

[*After title and allegation of intestate's title and plaintiff's relationship.*]

II. That said M.... N.... died on or about ....., 19.., intestate, and that the fee of said premises thereupon descended to plaintiff as his sole heir at law.

**847. By officer of unincorporated association (N. Y. Code sec. 1919).**

[*Title of court.*]

<p>A.... B...., President,          [or Treasurer] of the          X.... Y.... Company,          Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>C.... D....,          Defendant.</p>	}
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The plaintiff complaining as president [or treasurer] of the X.... Y.... Company, alleges:

I. That said company was at the times hereinafter named and now is an unincorporated association located in the town of ..... and county of ..... in this state, consisting of seven or more persons.

II. That the plaintiff is the president [or treasurer] of said association.

III. [*Set forth cause of action accruing to the association.*]

[*If the action is brought against the president or treasurer of such an unincorporated association the title should be changed, and the foregoing allegations altered in accordance with the fact.*]

**848. By or against domestic corporation.**

[*Title.*]

The plaintiff complaining of defendant, alleges:

I. That at the times hereinafter mentioned, plaintiff [or defendant] was, and now is, a domestic corporation, organized and existing under the laws of this state [or created under the laws of the United States and located in this state].

**849. By or against a foreign corporation.**

[Title and commencement.]

I. That the plaintiff [or defendant] is a corporation duly chartered under and by the laws of the state of . . . . ., and pursuant to an act of the legislature of said state, entitled [title of act] passed [date of the enactment]: [if the corporation be plaintiff add: and that it is duly licensed to transact business within the state of . . . . . and to make the contract hereinafter mentioned.]

II. That said corporation, being entitled, by its charter and the laws of said state, to make the contract hereinafter mentioned [*allege cause of action*].

**850. By or against a municipal corporation.**

[Title of court.]

A . . . . B . . . . , <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> <div style="text-align: left; padding-left: 20px;">. . . . . County,</div> <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}
--	---

[Commencement.]

I. That the defendant [or plaintiff] was at all the times hereinafter mentioned, and now is, a municipal corporation existing under the laws of the state of . . . . .

II. [*State cause of action.*]

III. [*If by statute any notice must be given to the corporation or its officers before action can be maintained, set forth the giving of the notice, as required by the statute, and the failure to pay. Such requirements are conditions precedent.*]

**851. Complaint by administrator.**

[Title of court.]

A . . . . B . . . . , as administrator of the estate of C . . . . D . . . . , deceased, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> <div style="text-align: left; padding-left: 20px;">E . . . . F . . . . ,</div> <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}
--	---

The plaintiff, complaining as administrator of the estate of C.... D...., deceased, alleges:

I. [*Set forth here the facts constituting the cause of action; if it arose before administrator's appointment, then continue.*]

II. That afterwards, and on the .... day of ....., 19.., said C.... D.... being then an inhabitant of this state, died intestate in the county of ..... being then a resident of said county; and thereafter, on the .... day of ....., 19.., such proceedings were duly had in the county court of said county of ..... that letters of administration upon the estate of said C.... D.... were duly granted and issued out of said county court to this plaintiff, appointing him sole administrator of the estate of said deceased, which trust he duly accepted, and duly qualified therefor by taking and filing oath and executing bond as required by law, which bond was by said county court duly approved, and plaintiff then entered upon the duties of, and now, is such administrator.

*[The above allegations are proper where the administrator sues as such upon a cause of action accruing to the decedent in his lifetime; if the action is brought upon a cause of action or debt due to the administrator by reason of an act done in the course of administration the action should be in his individual capacity, and the allegation of appointment and qualification should precede the statement of the cause of action.]*

## 852. Complaint against administrator.

*[Title of court and of cause.]*

The plaintiff, complaining of defendant as administrator of the estate of C.... D...., deceased, alleges:

I. [*State cause of action against deceased.*]

II. [*Allege appointment of defendant as administrator as in preceding form.*]

III. [*Allege presentation and refusal of claim in those states where such action is necessary before suit.*]

IV. [*If action is on money demand, in Wisconsin, allege failure to fix time for presentation of claims against estate; see sec. 3845 Stats. Wis. 1913.*]

## 853. Complaint by executor.

*[Title of court.]*

A.... B.... as Executor of the last will and testament of C.... D...., deceased, <div style="text-align: right;">Plaintiff,</div>	}	vs. E.... F...., <div style="text-align: right;">Defendant.</div>
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The plaintiff, complaining as executor aforesaid, alleges:

I. [*State cause of action in decedent.*]

II. That afterwards, and on the .... day of ....., 19.., the said C.... D.... died, leaving a last will by which he nominated this plaintiff executor thereof; and on the .... day of ....., 19.., said will was, in the county court for ..... county, duly proved and by the judgment of said court was admitted to probate as the last will and testament of said deceased; and letters testamentary were thereupon on the ....day of ....., 19.., duly issued out of said county court to this plaintiff as executor of said will; and that he thereupon duly qualified by taking oath and executing bond, as required by law, which bond was duly approved by said court; and plaintiff entered upon the discharge of the duties of, and is now, such executor.

#### 854. **Against administrator with will annexed.**

[*Title and commencement as in preceding forms.*]

II. [*Allegations of death of testator, probate of will, appointment and qualification of executor.*]

III. That on or about the .... day of ....., 19.., said [*executor*] departed this life [*or resigned*, and his resignation was accepted by said ..... court]; that thereafter and on or about the .... day of ....., 19.., letters of administration with the will annexed were duly issued and granted by the said ..... court to the defendant, appointing him administrator with the will annexed of the goods, chattels and credits which were of said C.... D...., and that said defendant thereupon duly qualified and has ever since been and is now acting as such administrator.



**855. Complaint by administrator de bonis non.**

[*Title and commencement as in preceding forms.*]

II. [*Set forth death of intestate and granting of prior administration.*]

III. That on or about the . . . . day of . . . . ., 19.., said [*administrator*] died without having wholly administered upon the assets of the estate of said [*intestate*]; that thereupon and on or about the . . . . day of . . . . ., 19.., letters of administration upon the goods, chattels, and credits of said [*intestate*] left unadministered by said [*administrator*] were duly issued and granted by said . . . . . court to this plaintiff, who thereafter duly qualified and continues to act as such administrator.

**856. Allegation when executor refuses to join in an action.**

[*Title and appropriate preliminary allegations as in preceding forms.*]

II. That this plaintiff, prior to the commencement of this action, applied to his co-executor, the said C.... D...., named as defendant herein, to join with him in the prosecution of this action, but that said defendant refused and neglected to do so, wherefore the said C.... D.... is made a defendant in this action.

**857. Against executor de son tort.**

[*Title.*]

I. [*Allege death of decedent and character of the plaintiff as executor, creditor, &c.*]

II. That after the death of the said [*decedent*] the defendant, without authority of law, took and collected the property of said [*decedent*] within this state, amounting in value to . . . . . dollars, and converted the same to his own use [*or has ever since retained the same in his own possession*].

**858. Complaint by foreign administrator.\***

[*Title of court and of cause.*]

\* [*Commencement.*]

I. [*Allege cause of action in decedent.*]

II. That said C.... D.... departed this life at ....., in the state of ....., and was, at the time of his death, a resident of said state.

III. That said M.... N.... left a last will and testament, wherein and whereby he appointed plaintiff sole executor thereof; that thereafter, and on or about the ..... day of ....., 19.., said will was duly admitted to probate by the ..... court of the county of..... in said state, and letters testamentary were thereupon duly issued and granted by said court to the plaintiff; that said ..... court had jurisdiction and was duly authorized and empowered by the laws of the state of ..... to admit said will to probate and to issue said letters as aforesaid.

IV. That thereafter, and on or about the .... day of ....., 19.., the plaintiff filed a duly authenticated copy of his said letters testamentary in the ..... court of ..... county, and that no executor of said will, nor administrator of the estate of said [*decedent*] has been appointed in this state. [*If other steps are required by local statutes to authorize the maintenance of an action by a foreign executor, compliance therewith should be alleged.*]

### 859. Husband and wife suing together.

[*Title.*]

[*Commencement.*]

I. That the plaintiffs are husband and wife, and were duly married on or about the .... day of ....., 19.., at .....

### 860. Against husband and wife, on wife's debt.

[*Title.*]

[*Commencement.*]

I. That the defendant C.... D.... is the wife of the defendant A.... B....

\*Ordinarily a foreign executor or administrator can not maintain an action as such without express legislative authority; in the following states such authority is given: Wisconsin (Wis. Stats. 1913 sec. 3267); Arkansas (Ark. Dig. of Stats. 1904, sec. 6003; but see notes under sec-

tions 79 and 80); Iowa (Iowa Ann. Code 1897 sec. 3306); Kansas (Kans. Gen. Stats. 1909 sec. 3639); Minnesota (Minn. Gen. Stats. 1913 sec. 8178); Missouri (Mo. R. S. 1909 sec. 1737); Nebraska (Neb. R. S. 1913 sec. 1426 and 1478); South Dakota (S. Dak. Pro. C. 1908 sec. 253).

II. That previous to the marriage of the defendants, and while the said C.... D.... was sole and unmarried [*state cause of action against wife*].

III. That previous to the marriage of the defendants, said C.... D.... owned certain property, to-wit, [*here describe the property of the wife which the husband has acquired*].

IV. That before their marriage the defendants entered into an ante-nuptial agreement [*here state effect of agreement as to transfer of property*]; and that the value of the separate property of said defendant C.... D.... so acquired by the defendant A.... B.... was ..... dollars.

**861. The same, husband having acquired wife's separate property.**

[*As in last preceding form to paragraph IV.*]

IV. That since the marriage of the defendants, and \* before this action, the defendant C.... D.... conveyed to the defendant A.... B... [*here state what was conveyed*]; and that the value of the separate property of the defendant [*wife*], so acquired by the defendant [*husband*] was ..... dollars.

**862. The same, wife's property acquired after marriage.**

[*Title.*]

[*Commencement.*]

[*Allegations I and II as in last form but one.*]

III. That since the marriage of the defendants, certain property, to-wit, [*here describe her separate property*] became the sole and separate property of the defendant [*wife*] by inheritance [*or gift, grant, devise, or, bequest*] from [a person other than her said husband, to-wit, one] M.... N....

IV. That thereafter and [*continue as in last preceding form from the \**].

**863. Complaint of infant plaintiff, suing by guardian ad litem.<sup>4</sup>**

[*Title of court.*]

<sup>4</sup>In Wisconsin the guardian must give written consent to his appointment. (Wis. Stats. 1913 sec. 2618).

A.... B...., an Infant, by C.... D...., his guard- ian ad litem,  vs. E.... F...., Defendant.	}	Plaintiff,  Defendant.
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The above named plaintiff, complaining of the defendant, alleges:

I. That he is an infant, under the age of twenty-one years, and that on the .... day of ....., 19.., on application therefor duly made, C.... D.... was by an order made by O.... P...., Esq., a court commissioner of this court [or, by the court] duly appointed the guardian of the plaintiff for the purposes of this action, he having consented thereto in writing.

II. [*State cause of action.*]

#### 864. Allegations of diverse citizenship in actions in the United States courts.

[*Title.*]

[*Commencement.*]

I. That this plaintiff is a citizen of the state of ..... and resides at .....; [or a corporation duly created and organized by and under the laws of the state of ..... and has its principal office and place of business at ..... in said state].

II. That the defendant is a citizen of the state of ..... and resides at ..... in said state [or, is a corporation duly created and organized by and under the laws of the state of ..... and has its principal office and place of business at ..... in said state].

#### 865. The same, in action in equity.

IN THE DISTRICT COURT OF THE UNITED STATES,  
 For the ..... District of .....

A.... B...., Plaintiff, vs. Y.... Z...., Defendant.	}	In Equity.
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To the Honorable, the judges of the ..... court of the United States, in and for the .... district of .....

A.... B...., a citizen of the state of ..... and resident of ..... in ..... county [*or, a corporation created and duly organized by and under the laws of the state of ..... and having its principal office and place of business at ..... in the state of .....]* brings this bill against Y.... Z.... a citizen of the state of ..... [*or, a corporation created and duly organized by and under the laws of the state of ..... and having its principal office and place of business at ..... in ..... county*]. And for his cause of action plaintiff states:

**866. The same, by alien against citizen, in action at law.**

[*Title and commencement.*]

I. That plaintiff is an alien and a subject of the United Kingdom of Great Britain and Ireland [*or otherwise, according to the fact*] and resides at .... [*or, that plaintiff is a corporation created and existing by and under the laws of the kingdom, &c., and has its principal office and place of business at .....*], and that defendant is a citizen of the state of ..... and resides at ..... [*or, is a corporation created and organized by and under the laws of the state of ..... and having its principal office and place of business at .....*].

**867. Action by committee of lunatic, idiot, etc., (N. Y. Code sec. 2340).**

[*Title of court.*]



A.... B...., as committee of  
M.... N...., a lunatic [*or*  
an idiot, *or* an habitual  
drunkard],

Plaintiff,

vs.

W.... X.... and Y....  
Z....,

Defendants.

The plaintiff, complaining as committee of M.... N.... a lunatic [*or* an idiot, *or* a person of unsound mind, *or* an habitual drunkard], alleges:

I. That on the .... day of ....., 19.., upon proceedings duly instituted in the Supreme Court of this state, in and for the county of ..... [*or, in the case of an habitual drunkard, it may be, duly instituted in the county court of the county of .....]* by an inquisition then taken and returned, [*or, by the verdict of a jury then duly rendered]* said M.... N.... was found to be a lunatic [*or, otherwise, as above]* and thereupon this plaintiff was, by an order of said court, duly made by said court, on the .... day of ....., 19.., at ..... appointed a committee of said M.... N....'s person and estate [*or, if of a part of the property, describe the property*]; and that this plaintiff thereupon duly qualified as such committee and entered upon the discharge of the duties of his said office, and is now such committee.

II. [*Set forth cause of action in incompetent.*]

### 868. Action against committee of a lunatic (New York).

[*Title of court.*]

A.... B....,

Plaintiff,

vs.

Y.... Z...., as committee  
of M.... N...., a lunatic  
[*or, an idiot, or, habitual*  
*drunkard*],

Defendant.

[Commencement and statement of cause of action against the lunatic.]

II. That afterwards [or, on the .... day of ....., 19.., at ....] the said M.... N...., was duly adjudged by the ..... court to be a lunatic [or otherwise, as above].

III. That the defendant was then and there duly appointed by the said court committee of the [person and] estate of the said lunatic, and duly qualified as such committee.

IV. That the plaintiff was duly authorized to commence this action, by an order of the ..... court duly made and entered upon the .... day of ....., 19..

[Prayer for judgment.]

**869. Action by general guardian of insane or incompetent person (Wis. Stats. 1913 secs. 3976-3982).**

[Title of court.]

A.... B...., as guardian  
of the person and estate  
of C.... D...., an in-  
sane person [or incom-  
petent],

Plaintiff,

vs.

E.... F....,

Defendant.

The plaintiff, complaining as guardian of the person and estate of C.... D...., an insane person [or, incompetent, &c.] alleges:

I. That on the .... day of ....., 19.., such proceedings were duly had in the county court of ..... county, upon petition duly filed in that behalf, that it was by said county court duly adjudged and determined that by reason of insanity the said C.... D.... was mentally incompetent and incapable of taking care of himself and managing his property [or, that the said C.... D.... by excessive drinking was and is unable to attend to business, or state other facts as enumerated in section 3978 Wis. Stats. 1898, authorizing the appointment of a general guardian], and the said plaintiff was

thereupon, by said county court, duly appointed guardian of the person and estate of said C. . . . D. . . ., with the powers and duties specified by law; and that he accepted and duly qualified by executing bond, which was by said court duly approved, and entered upon the duties of, and is now, such guardian.

II. [*State cause of action*].

**870. By married woman, relating to her separate estate.<sup>5</sup>**

[*Title of court.*]

<p>A. . . . B. . . .,                      Plaintiff,                      vs.  C. . . . D. . . .,                      Defendant.</p>
--

The plaintiff, complaining of the defendant, alleges:

I. [*Set forth facts showing cause of action.*]

<sup>5</sup>This form and the one immediately following may be used in those states which simply provide that when an action concerns the separate property of a wife she may sue or be sued alone. In these states it would seem to be necessary yet to allege in the complaint the facts showing that the action concerns the separate property of the wife. The states which make this provision in substance are as follows: Arkansas (Ark. Dig. of Stats. 1904 sec. 6017); California (Cal. C. C. P. 1906 sec. 370); Oregon (Oregon Laws 1910 secs. 30, 31); Washington (Wash. Rem. and Bal. Code 1910 sec. 181).

The following states go further and provide in substance that a married woman may sue as if she were sole, and in these states it would not seem to be necessary to insert the allegations with regard to her separate property, although prudence might well suggest that they be inserted; Wisconsin (Wis. Stats. 1913 sec.

2345); Arizona (Ariz. R. S. 1913 sec. 3851); Colorado (Colo. Code Ann. 1911 sec. 6); Idaho (Idaho Rev. Codes 1908 sec. 4093); Iowa (Iowa Ann. Code 1897 sec. 3477); Kansas (Kans. Gen. Stats. 1909 sec. 4874, 5621); Montana (Mont. Rev. Codes 1907 sec. 6479); Minnesota (Minn. Gen. Stats. 1913 sec. 7677); Missouri (Mo. R. S. 1909 sec. 1735, 8304); Nebraska (Neb. R. S. 1913 sec. 7586); North Dakota (N. Dak. Rev. Codes 1905 sec. 6810); South Dakota (S. Dak. C. C. P. 1908 sec. 83); Oklahoma (Okla. Comp. Laws 1909 sec. 5561); Utah (Utah Comp. Laws 1907 sec. 2904); Wyoming (Wyo. Comp. Stats. 1910 sec. 4314).

In Texas (Tex. Civ. Stats. Ann. 1913 art. 1839 and laws of 1911, appendix, p. 2915), application must be made to the district court, with consent of and joined by husband, for removal of disabilities of coverture for mercantile and trading purposes.

II. That on the . . . day of . . . . ., 19. . ., the plaintiff intermarried with one J. . . . S. . . . whose wife she now is.

III. That the consideration of the said note [*or* of the said transfer, *or*, indorsement of said note to the plaintiff] was the payment by this plaintiff to the maker [*or* indorser, *or* assignor] thereof, of the sum of . . . . . dollars, which said sum was [*or*, the principal and interest of a certain sum which was] at and before the time of her marriage, owned by her [*or*, which was acquired by her, by her trade or services]; and thereafter was her sole and separate property, and so continued until the time of such payment; and that said note thereupon became and ever since has been her sole and separate property.

*Or:* III. That the consideration of the said note, [*or*, of the said transfer, *or*, indorsement, of said note to the plaintiff] was the payment by the plaintiff to the maker [*or* indorser, *or* assignor] of the sum of . . . . . dollars, which said sum became, [*or* was the principal and interest of a certain sum which became] after her said marriage her sole and separate property by inheritance [*or* gift, grant, devise, *or* bequest] from [a person other than her husband, to-wit, one] M. . . . N. . . . and so continued until the time of such payment; and that said note thereupon became and ever since has been her sole and separate property.

*Or:* III. That the consideration of [*&c. as above*] which said sum was the proceeds of certain property which was at and before [*&c. as above*] [*or* which said sum was the proceeds of certain property which became after *&c. as above*].

### 871. The same, in action upon other than money contract.

[*Title.*]

[*Commencement.*]

I. [*State cause of action.*]

II. [*Allege marriage as in preceding form.*]

III. That the property hereinbefore mentioned was, at and before the time of her said marriage, owned by her, and ever since has been her sole and separate property.

*Or:* That the property hereinbefore mentioned was after her said marriage bought by her with the proceeds of certain property which was at and before the time of her said mar-

riage owned by her; and that ever since the same has been [*&c. as above*].

*Or:* That the property hereinbefore mentioned became, after her said marriage, her sole and separate property, by inheritance [*or, gift, grant, devise, or, bequest*] from M. . . . N. . . ., and that ever since the same has been [*&c. as above*].

*Or:* That the property hereinbefore mentioned was after her said marriage acquired by her, by her trade or services entered into on her own and separate account, and ever since, *&c.*

### 872. Action by or against partners, common form.\*

[*Title of court.*]

A. . . . B. . . . and C. . . .  
D. . . .,

Plaintiffs,

vs.

E. . . . F. . . . and G. . . .  
H. . . .,

Defendants.

The plaintiffs, complaining of the defendants, allege:

I. That at the times hereinafter mentioned [*or from* . . . . ., 19. . ., to . . . . ., 19. . .] the plaintiff [*or defendants*] A. . . . B. . . . and C. . . . D. . . . were copartners doing business at the city of . . . . . under the firm name of A. . . . B. . . . & Co.

\* In the following states a partnership may sue or be sued by its firm name. In these cases the title of the action should be in the firm name and the complaint should allege that the plaintiff or defendant was a partnership doing business under such firm name: Iowa (Iowa Ann. Code 1897 sec. 3468); Nebraska (Neb. R. S. 1913 sec. 7594); Texas (Tex. Civ. Stats. Ann. 1913 art. 6149). In the following states the association may be *sued* by common name: California

(Cal. C. C. P. 1906 sec. 388); Colorado (Colo. Code Ann. 1911 sec. 14); Idaho (Idaho Rev. Codes 1908 sec. 4112); Montana (Mont. Rev. Codes 1907 sec. 6497); Minnesota (Minn. Gen. Stats. 1913 sec. 7689); Utah (Utah Comp. Laws 1907 sec. 2927). In Wisconsin (Wis. Stats. 1913 sec. 2612) proceedings may be in partnership name so long as names of the several members of the partnership are unknown.



**873. By surviving partner.**[*Title of court and of cause.*][*Commencement.*]

I. That at the times hereinafter mentioned [*or, on and prior to the . . . . day of . . . . ., 19.., this plaintiff and one C. . . . D. . . . were partners doing business under the firm name of A. . . . B. . . . & Co., which partnership continued until the death of said C. . . . D. . . . as hereinafter alleged.*

II. [*Set forth the cause of action.*]

III. That thereafter and before this action [*or on the . . . . day of . . . . ., 19..*] said C. . . . D. . . . died, leaving this plaintiff the sole surviving partner of the firm.

**874. By or against public officer.**[*Title of court.*]

A. . . . B. . . ., as [*give proper title of office*],

Plaintiff,

vs.

C. . . . D. . . . [*add title of office, if against an officer*],  
Defendant.

The plaintiff, complaining of defendant, alleges:

I. That the plaintiff [*or defendant*] is the [*name proper title of officer*] duly elected [*or appointed*], qualified, and acting as such.

**875. By the state, upon information of the attorney-general (Wis. Stats. 1913 sec. 3466).**[*Title of court.*]

The State of Wisconsin, upon  
Information of A. . . . B. . . .  
Attorney-General thereof,  
Plaintiff,

vs.

C. . . . D. . . .,  
Defendant.

The plaintiff, prosecuting this action upon the information of A.... B...., its attorney-general, complaining of the defendant, alleges:

I. &c., &c., &c.

**876. The state, by its attorney-general on relation of a private person (Wis. Stats. 1913 secs. 3465, 3466).**

[*Title of court.*]

<p>The State of Wisconsin, by A.... B...., its Attorney- General, upon the Relation of C.... D...., and the said C.... D.... individually, Plaintiffs, vs. E.... F...., Defendant.</p>	}
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The State of Wisconsin, prosecuting this action by A.... B...., its attorney-general, upon the relation of C.... D...., and the said C.... D.... individually, complaining of the defendant, allege:

I. &c., &c., &c.

**877. By receiver, in supplementary proceedings**

[*Title of court and of cause.*]

A.... B...., complaining as receiver of the property of M.... N...., alleges:

I. [*Set forth cause of action accruing to the judgment debtor.*]

II. That on or about the .... day of ....., 19..., one O.... P.... recovered judgment against said C.... D.... in the ..... court, for the sum of ..... dollars; that the judgment was on the .... day of ....., 19..., duly filed and docketed in the office of the clerk of the ..... court for the county of ..... where said judgment debtor then resided and still resides; that an execution against the property of said judgment debtor was thereupon issued to the sheriff of said county, which execution has been returned by said

sheriff wholly unsatisfied, and that said judgment is now wholly unpaid.

III. That on the ... day of ....., 19.., at ....., upon an application made by said judgment creditor of said M.... N...., in proceedings supplementary to execution, and by an order then duly made by Hon. I.... K...., circuit judge of said county of ..... [or, county judge for the county of ....., or, a court commissioner for said county of .....] the plaintiff was appointed receiver of the property of said M.... N....

IV. That thereafter, and before the commencement of this action, plaintiff gave the bond required by said order; that said bond was approved by the said ..... and is, with such approval thereon, on file in the said ..... court and was so filed prior to the commencement of this action.

V. That this plaintiff, as receiver aforesaid, was duly authorized to commence this action, by an order of the ..... court of ..... county duly made and entered on the .... day of ....., 19..

### 878. By receiver appointed in an action.

[Title.]

[Commencement as in preceding form.]

I. [Cause of action.]

II. That on the .... day of ....., 19.., at the .... of ....., in an action then pending in the ..... court of ..... county, wherein M.... N.... was plaintiff and O... P.... was defendant, upon an application made by said M.... N...., and by an order or determination duly made by said court, this plaintiff was appointed receiver of the property hereinafter described.

III. [Allege giving and approval of bond, and leave to sue, as in preceding form.]

### 879. By receiver of corporation in sequestration action.

[Title.]

[Commencement as in preceding forms.]

I. [Allege incorporation of the company.]

II. That on the .... day of ....., 19.., the plaintiff was duly appointed receiver of all the property and effects of the said X.... Y.... Company by this court [or by the

..... court of ..... county] in an action brought therein by one C.... D.... against said company [*here describe the action in which the appointment was made with sufficient particularity to show that it was an action in which, under the statutes of the particular state a judgment of sequestration of the corporate property was proper.*]

III. That such proceedings were afterwards had in such action that on ....., 19.., judgment was made and entered therein, among other things sequestrating the property of said X.... Y.... Company, and appointing said plaintiff receiver of its property and effects, with the usual power of receivers in such cases, and directing the distribution of its said property and effects among the creditors thereof. That said plaintiff thereupon in all respects duly qualified as such receiver of said company, as required by said judgment, and the statutes of this state, and entered upon the duties of his said office, and still is such receiver.

IV. [*Allege leave to sue.*]

V. [*State facts showing cause of action.*]

**880. Action by stockholder in the interest of the corporation, directors refusing to sue.**

[*Title of court.*]

A.... B....,	Plaintiff,
	vs.
The X.... Y.... Company,	a corporation, C.... D....
E.... F.... and G....	H...., Directors of said corporation, and M.... N....
	Defendants.

The plaintiff, complaining of the defendants, alleges:

I. [*Allege incorporation of the defendant corporation as in appropriate preceding form.*]

II. That the plaintiff is a stockholder of the said corporation owning and holding .... shares of the capital stock thereof.

III. [*Set forth cause of action against the defendant M.... N.... in favor of the corporation.*]

IV. That the reason this action is not brought by said corporation itself is that the defendants C.... D...., E.... F.... and G.... H...., who constitute the board of directors of said corporation, have refused and neglected to bring or prosecute the same, though requested by this plaintiff so to do, on or about the .... day of ....., 19..

**881. By parent for injury to minor child (Minn. Gen. Stats. 1913 sec. 7681).**

I. That plaintiff is the father of E.... F...., a boy twelve years of age, and brings this action for the benefit of such child.

II. [*Allege cause of action against defendant for injury to child.*]

III. That by reason of the premises said child was damaged ..... dollars.



## CHAPTER XX.

### COMPLAINTS ON PROMISSORY NOTES

882. Payee against maker, pleading legal effect (Connecticut).
883. The same, a more extended form.
884. The same, setting forth copy of instrument.
885. On two notes, one partly paid.
886. On note signed by agent.
887. On note made by partners.
888. On partnership note, alleging fact of partnership.
889. By partners, on note payable to firm.
890. By surviving partner, on a note payable to the order of his late firm.
891. By payee against surviving partner.
892. Against executor or administrator of maker.
893. By executor or administrator of payee.
894. By a corporation, against a corporation.
895. Upon several notes, on agreement to pay all upon default in one.
896. On a note payable at a certain time after sight.
897. On a note for a voluntary subscription, payable on conditions.
898. On a note wrongly dated.
899. By first indorsee against maker.
900. The same, pleading note by copy.
901. By subsequent indorsee against maker.
902. On a note payable to bearer, or to order of the maker or a fictitious person.
903. The same, pleading copy of note.
904. By first endorsee against endorsing payee.
905. The same, pleading copy of note.
906. Remote endorsee against endorsing payee.
907. Remote endorsee against his immediate endorser.
908. Allegation of excuse for non-presentment, maker not found.
909. Allegation of waiver of demand and notice before or at maturity.
910. The same, waiver after maturity.
911. Against indorser, on a note of doubtful validity as against the maker.
912. Indorsee against maker and endorsing payee.
913. Remote indorsee against maker and two indorsers.
914. By payee against maker and indorser to give credit.
915. Against maker and irregular indorser of non-negotiable note.
916. By assignee against maker of negotiable note not indorsed.
917. On note of a state bank.
918. On lost note. (Wisconsin).
919. Payee against maker and guarantor of note.
920. Complaint by sheriff upon a note held by him under a writ of attachment (Wisconsin).
921. Complaint by partnership on note (Texas).

**882. Payee against maker, pleading legal effect (Conn. Pr. Act. form 212).**

[*Title.*]

The plaintiff complaining of the defendant alleges.

I. On . . . . ., 19.. the defendant by his note promised to pay to the plaintiff . . . . . dollars . . . . . days after date for value received with interest at . . . . . per cent per annum from said date.

II. The same has not been paid.

The plaintiff demands judgment for [*state amount*] with costs.

*[The above is given as an example of a very brief form which ought to be sufficient; nevertheless its use is not recommended in states where the courts are not inclined to construe pleadings liberally.]*

**883. The same, a more extended form.<sup>1</sup>**

[*Title.*]

The plaintiff, complaining of the defendant alleges:

I. That on or about the . . . . . day of . . . . ., 19.., the defendant made and delivered to the plaintiff his promissory note in writing \* dated on the said day, and thereby promised to pay to the plaintiff, [or his order] at . . . . . the sum of

<sup>1</sup> If the action, counter claim or set-off is founded on a note, bond, bill or other writing as evidence of indebtedness, the original, or a copy thereof, must be filed as part of the pleading, if in the power of the party to produce it. If not filed the reason thereof must be stated in the pleading. If upon an account, a copy thereof must, in like manner, be filed with the pleading. (Ark. Dig. of Stats. 1904 sec. 6128; Wyo. Comp. Stats. 1910 sec. 4405); but if the action, counter-claim or set-off be founded upon a series of written instruments executed by the same person, it shall be sufficient to attach and file a copy of one only, and in succeeding causes of action or defenses to set forth in general terms descriptions of the several instruments respectively, (Kans. Gen. Stats. 1909 sec. 5713; Okla. Comp. Laws 1909 sec. 5658).

(Mo. R. S. 1909 sec. 1832): It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but if they be not set forth, he shall attach to his pleading, referring to it therein, a copy of the account, which shall be a part of the record; but if they be not set forth in or attached to said pleading, he shall be precluded from giving evidence thereof.

(Neb. R. S. 1913 sec. 7692): same as Arkansas, *supra*, except that *copies* only must be attached and the section does not include actions founded upon notes issued to circulate as money.

(Iowa Ann. Code 1897 sec. 3561): makes it ground of demurrer, to a petition founded on an account or writing as evidence of indebtedness, that neither such writing nor account nor copy thereof is incorporated into

..... dollars .... months after said date [or on the .... day of ....., 19.., or on demand] with interest at the rate of .... per cent per annum after date [or after maturity].

II. That no part of said note has been paid [except the sum of, &c.] and that the plaintiff is now the owner and holder thereof.

WHEREFORE the plaintiff demands judgment against the defendant for the sum of ..... dollars, with interest thereon from the .... day of ....., 19.., at .... per cent per annum, and for the costs and disbursements of this action.

### 884. The same, setting forth copy of instrument.<sup>3</sup>

[Title.]

[Commencement.]

I. That heretofore [or, on or about the .... day of ....., 19..] the defendant made and delivered to the plaintiff his certain promissory note in writing \* of which the following is a copy: [set out exact copy of note.]

II. That no part of said note has been paid [except the sum of ..... dollars, paid on the .... day of ....., 19..,]

or attached to the pleading, or a sufficient reason stated for not doing so.

In these states, therefore, the first two forms in this chapter appear to be insufficient, and the next following form should be used.

(Oregon Laws 1910 sec. 84): A party may set forth in a pleading the items of an account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

(Tex. Civ. Stats. Ann. 1913 art. 1907): In every action in which a defendant shall desire to prove any

payment, counter claim or set-off, he shall file with his plea an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; and on failure to do so he shall not be entitled to prove the same unless it be so plainly and particularly described in the plea so as to give the plaintiff full notice of the character thereof.

(Ark. Dig. of Stats. 1904 sec. 6129): If either party shall rely upon any deed or other writing, he shall file with his pleading the original deed or writing, if in his power, or a copy thereof. If he cannot procure such deed or writing, or a copy thereof, he shall so state in his pleading, together with the "reasons therefor," and, if such reasons are sufficient, he may file the best evidence of the contents of such deed or writing in his power. Original deeds and other writings, filed by either party, shall remain on file for the inspection of the other party until allowed by the court to be

and that there is now due the plaintiff thereon from the defendant the sum of . . . . . dollars, with interest thereon from . . . . ., 19.., at the rate of . . . . per cent, which the plaintiff claims.

[*Demand for judgment as in last preceding form.*]

### 885. On two notes, one partly paid.

[*Title.*]

[*Commencement.*]

*First.* For a first cause of action:

I. That heretofore the defendant made and delivered to plaintiff his promissory note in writing [*continue as in Form 883 or 884 from the \*.*]

II. That no part thereof has been paid, except the sum of . . . . . dollars, &c. [*continue as in Form 883 or 884.*]

*Second.* For a second cause of action:

I. That heretofore the defendant made and delivered to plaintiff his other promissory note in writing [*continue as above.*]

II. That no part thereof has been paid [*continue as in Form 883 or 884.*]

WHEREFORE the plaintiff demands judgment against the defendant for the sum of [*aggregate principal*] with interest on . . . . . dollars thereof from the . . . . day of . . . . ., 19.., and with interest on . . . . . dollars thereof from the . . . .

withdrawn, and in such cases copies, attested by the clerk, shall be substituted by the parties withdrawing the original.

<sup>2</sup>Most of the code states provide that in an action, counter claim, or defense founded on an instrument for the payment of money only, it shall be sufficient to set forth a copy of the instrument and state that there is due the party thereon from the adverse party a specified sum which he claims. (Wis. Stats. 1913 sec. 2675). (Kans. Gen. Stats. 1909 sec. 5714, same as Wisconsin, except, after "a specified sum which he claims," add, "with interest," and add also, "When others than the makers of a promissory note or the acceptors of bill of

exchange are parties in the action, it shall be necessary to state also the kind of liability of the several parties and the facts, as they may be, which fix their liability.") (Mont. Rev. Codes 1907 sec. 6573, same as Wisconsin, sec. 2675, except add, "Such an allegation is equivalent to setting forth the instrument according to its legal effect.") (Neb. R. S. 1913 sec. 7697, same as Kansas, sec. 5714). (N. D. Rev. Codes 1905 sec. 6872, same as Wisconsin, sec. 2675). (S. Dak. C. C. P. 1908 sec. 139, same as Wisconsin, sec. 2675). (Okla. Comp. Laws 1909 sec. 5663, same as Kansas, sec. 5714). (Wyo. Comp. Stats. 1910 sec. 4406, same as Kansas, sec. 5714).

day of . . . . ., 19.., and for the costs and disbursements of this action.

**886. On note signed by agent.**

[*Title of court and of cause.*]

[*Commencement.*]

I. That heretofore [*or on or about the . . . . day of . . . . ., 19..*] the defendant, by one M. . . . N. . . . his agent, [*or his attorney in fact*], duly authorized thereto, made and delivered to the plaintiff his promissory note in writing, [*continue as in Form 883 or 884 from the \**].

**887. On note made by partners.**

[*Title of court and of cause.*]

[*Commencement.*]

I. That heretofore [*or on or about the . . . . day of . . . . ., 19..*] the defendants, under their firm name of Y. . . . Z. . . . & Co., made and delivered to the plaintiff their promissory note in writing, [*continue as in Form 883 or 884 from the \**].

**888. On partnership note, alleging fact of partnership.**

I. That at the time of the making of the note hereinafter mentioned the defendants were partners doing business at . . . . . under the firm name of Y. . . . Z. . . . & Co.

II. That on the . . . . day of . . . . ., 19.., the defendants under said firm name, made and delivered to the plaintiff their promissory note in writing, [*continue as in Form 883 or 884 from the \**].

**889. By partners, on note payable to firm.**

I. That at the time of the making and delivery of the note hereinafter mentioned the plaintiffs were partners doing business at . . . . . under the firm name of A. . . . B. . . . & Co.

II. That heretofore [*or on or about the . . . . day of . . . . ., 19..*] the defendant made and delivered to the plaintiffs his promissory note in writing, dated on the . . . . day of . . . . ., 19.., and thereby promised to pay to these plaintiffs under their firm name of A. . . . B. . . . & Co. [*or their order*] . . . . . dollars . . . . months after said date



[or on the . . . . day of . . . . ., 19..] [or set forth copy of note as in Form 884.]

III. [Continue as in Form 883 or 884.]

**890. By surviving partner, on a note payable to the order of his late firm.**

I. That at the time of the making of the note hereinafter mentioned, the plaintiff and one C. . . . D. . . . were partners doing business under the firm name of A. . . . B. . . . & Co.

II. That on the . . . . day of . . . . ., 19.., the defendant made and delivered to said firm his promissory note in writing, dated on that day, and thereby promised to pay to them, under their said firm name [or their order] . . . . . dollars, . . . . months after said date [or on the . . . . day of . . . . ., 19..]

III. That no part thereof has been paid [except the sum of, &c.]

[Or: set forth copy of note and following allegations as in Form 884.]

IV. That on the . . . . day of . . . . ., 19.., at . . . . . said C. . . . D. . . . died, leaving the plaintiff the sole surviving partner of said firm.

**891. By payee against surviving partner.**

I. That at the time of the making of the note hereinafter mentioned the defendant and one W. . . . X. . . . were partners doing business under the firm name of Y. . . . Z. . . . & Co.

II. That on the . . . . day of . . . . ., 19.., at . . . . . the said partners, under their said firm name, made and delivered to the plaintiff their promissory note in writing, [continue as in Form 883 or 884 from the \* to the prayer for judgment].

III. That on the . . . . day of . . . . ., 19.., at . . . . . said W. . . . X. . . . died, leaving the defendant the sole surviving partner of said firm.

[Prayer for judgment.]

**892. Against executor or administrator of maker.**

I. That heretofore [or on or about the . . . . day of . . . . . 19..] one C. . . . D. . . . made and delivered to the plaintiff

his promissory note in writing, [*continue as in Form 883 or 884 from the \* to the prayer for judgment*].

II. [*Allege death of maker, and appointment of the defendant as administrator or executor, as in Forms 851 and 853*].

III. [*Prayer for judgment*].

### 893. By executor or administrator of payee.

I. Upon information and belief that heretofore [*or on or about the . . . day of . . . . ., 19..*] the defendant made and delivered to one C. . . . D. . . . his promissory note in writing, [*continue as in Form 883 or 884 from the \* to the prayer for judgment*].

II. [*Allege death of maker, and plaintiff's appointment as executor or administrator, as in Forms 851 and 853*].

[*Prayer for judgment*].

### 894. By a corporation, against a corporation.

I. [*Allege incorporation of plaintiff, as in Forms 848 et seq.*]

II. [*Allege incorporation of defendant, as in same Forms.*]

III. That heretofore [*or on or about the . . . day of . . . . ., 19..*] the defendant, by C. . . . D. . . . its president [*or cashier, or other agent*], duly authorized thereto, made and delivered to the plaintiff its promissory note in writing [*continue as in Form 883 or 884*].

### 895. Upon several notes, on agreement to pay all upon default in one.

I. That upon the . . . day of . . . . ., 19.., the defendants were indebted to the plaintiffs in the sum of . . . . . dollars.

II. That to secure the payment of that sum, and in consideration of the extension of credit thereby obtained, the defendants agreed to deliver, and did on said day make and deliver to the plaintiffs their promissory notes in writing, of which copies are hereto annexed and made a part of this complaint, marked Exhibits A, B and C.

III. That at the same time, and in consideration of the acceptance of said notes, the defendants agreed with the plaintiffs in writing that in case of any default in the payment of any of said notes at any time when the same should become due and payable, the whole amount of the said sum of . . . . .

dollars and interest then remaining unpaid, should forthwith, at the option of the plaintiffs, become at once due and payable.

IV. That the defendant has made default in the payment of the first of said notes, which became due and payable on the . . . . day of . . . . ., 19.., and no part thereof has been paid, and the plaintiffs have duly exercised their said option, and have declared the whole of said debt due.

[*Prayer for judgment.*]

**896. On a note payable at a certain time after sight.**

I. [*Allege the execution of the note as in Forms 883 or 884.*]

II. That on the . . . . day of . . . . ., 19.., at . . . . . said note was duly presented to the defendant [*maker*] with notice that payment was required according to the terms thereof.

III. [*Set forth nonpayment and following formal allegations as in Forms 883 or 884.*]

[*Prayer for judgment.*]

**897. On a note for a voluntary subscription, payable on conditions.**

I. [*If plaintiff is a corporation, allege the fact as in Forms 848 et seq.*]

II. That the said defendant heretofore [*or, on or about the . . . . day of . . . . ., 19..*] for a valuable consideration, made and delivered to the plaintiff his promissory note in writing, whereby he promised to pay to the plaintiff or order . . . . . dollars, with interest, &c., payable [*here set forth condition upon which note was given, as*] when the sum of . . . . . dollars shall have been in good faith subscribed toward the endowment of said institution [*or other condition, according to the fact*].

III. That prior to the commencement of this action the full sum of . . . . . dollars was in good faith subscribed to the endowment of said institution, [*or allege compliance with the conditions of the note in apt terms*].

IV. [*Allege ownership and nonpayment of note, as in preceding forms*].

[*Prayer for judgment.*]

**898. On a note wrongly dated.**

That on the . . . . day of . . . . ., 19.., the defendant made and delivered to plaintiff his promissory note in writing, bearing date by mistake on the . . . . day of . . . . ., 19.., whereas in truth it was intended to bear date on said . . . . day of . . . . ., 19.., thereby promising to pay the plaintiff [or his order] . . . . . dollars, . . . . days after said [*intended date*].

II. [*Allege ownership and nonpayment, as in preceding forms.*]

[*Prayer for judgment.*]

**899. By first indorsee against maker.**

I. That heretofore the defendant [*maker*] made and delivered to one C. . . . D. . . . his promissory note in writing, dated on the . . . . day of . . . . ., 19.., and thereby promised to pay to the order of said C. . . . D. . . . . dollars . . . . months after said date, [*or, on the . . . . day of . . . . ., 19..*]

II. That said C. . . . D. . . . thereafter [and before its maturity] indorsed and delivered the same to the plaintiff [for value.]

III. That the plaintiff is now the lawful owner and holder of said note, that no part of the same has been paid [except the sum of . . . . . dollars, etc.] and there is now due thereon from the defendant to the plaintiff the sum of . . . . . dollars, with interest, etc.

[*Prayer for judgment.*]

**900. The same, pleading note by copy.**

I. That heretofore [*or on or about the . . . . day of . . . . ., 19..*] the defendant made and delivered to one C. . . . D. . . . his promissory note in writing, of which the following is a copy, [*set out exact copy of note*].

II. That thereafter and before maturity [*or on or about the . . . . day of . . . . ., 19..*] said C. . . . D. . . . sold and delivered said note to the plaintiff, and indorsed the same in the words following: "Pay to the order of A. . . . B. . . . , C. . . . D. . . . ." That no part of said note has been paid, that the plaintiff is still the owner and holder thereof, and there is now due thereon from the defendant to the plaintiff

the sum of ..... dollars, with interest etc., which the plaintiff claims.

[*Prayer for judgment.*]

**901. By subsequent indorsee against maker.**

I. [*Allege execution of note, as in preceding forms.*]

II. That thereafter and before its maturity said note was duly indorsed and delivered by said C.... D.... to one E.... F...., who likewise thereafter and before its maturity indorsed and delivered said note to this plaintiff.

III. [*Allege ownership and nonpayment, as in preceding forms.*]

[*Prayer for judgment.*]

**902. On a note payable to bearer, or to order of the maker or a fictitious person.**

I. That heretofore the defendant [*maker*] made and delivered [to C.... D....] his promissory note in writing\* dated on the .... day of ....., 19.., at ....., and thereby promised to pay to bearer, [*or, to C.... D.... or bearer, or, to bills payable or order, or to the order of the defendant*] ..... dollars, .... months after said date, with interest, etc.

II. That the same thereafter and before maturity, [*if note was payable to defendant's own order*, was indorsed by said defendant in blank, and] came lawfully to the possession of the plaintiff [for value.]

III. That no part thereof has been paid [except the sum of, etc.].

IV. That the plaintiff is now the lawful owner and holder of said note and that there is now due thereon from defendant to plaintiff the sum of, etc.

[*Prayer for judgment.*]

**903. The same, pleading copy of note.**

I. [*As in last preceding form to the \**] of which the following is a copy: [*Set out copy of note*].

II. That thereafter, and before maturity thereof, said note [*if payable to defendant's own order*, was endorsed by the defendant in blank and] came lawfully to the possession of the plaintiff [for value].



III. That no part of said note has been paid [except, etc.] and there is now due thereon from the defendant to the plaintiff the sum of ..... dollars, with interest, etc., which the plaintiff claims in this action.

[*Prayer for judgment.*]

#### 904. By first indorsee against indorsing payee.

I. That heretofore one M.... N.... [or M.... N.... & Co.] made his [their] promissory note in writing, dated on the .... day of ....., 19.., and thereby promised to pay to the defendant [or to the defendants, under their firm name of Y.... Z.... & Co.] [or order] ..... dollars .... days after said date [or, on, etc].

II. That the defendant [*indorser*] [or, the defendants, *indorsers*, under their said firm name] then and there [or, thereafter and before this action] indorsed and delivered the same to the plaintiff [for value].

III. That [at maturity] said note was duly presented for payment, and payment thereof demanded, but was not paid, whereupon said note was duly protested for nonpayment, of all of which due notice was given to the defendant [*indorser*].

IV. That the cost of said protest was ..... dollars, which plaintiff was obliged to and did pay.

V. [*Allege nonpayment, and present ownership, as in preceding forms.*]

[*Prayer for judgment.*]

#### 905. The same, pleading copy of note.

I. That heretofore [or on or about the .... day of ....., 19..] one C.... D.... [or C.... D.... & Co.] made and delivered to the defendant his [or their] promissory note in writing, of which the following is a copy [*set forth copy of note with exactness*].

[*Allegations II, III, and IV as in last preceding form.*]

V. That no part of said note, or the cost of protest thereof has been paid, [except the sum of, etc.] and there is now due from defendant to plaintiff thereon the sum of ..... dollars [with interest, etc.] which the plaintiff claims.

[*Prayer for judgment.*]

**906. Remote indorsee against indorsing payee.**

[*Proceed as in either of the last two preceding forms, substituting for paragraph II as follows*]:

II. That the defendant [*or, the defendants, under their firm name of Y.... Z.... & Co.*] then and there [*or, thereafter*] indorsed the same in blank and delivered it so indorsed; and thereafter, and before maturity thereof it lawfully came to the possession of the plaintiff, who is now the owner and holder thereof for value.

**907. Remote indorsee against his immediate indorser.**

I. That heretofore one M.... N.... made and delivered his promissory note in writing, dated on the .... day of ....., 19.., and thereby promised to pay to the order of O.... P.... the sum of ..... dollars .... days after said [*Or plead by copy as in Form 905.*]

II. That the said payee then and there [*or, thereafter*] indorsed the same to the defendant [*or, indorsed the same, and delivered it so endorsed*].

III. That thereafter and before maturity thereof, the defendant indorsed and delivered the same to the plaintiff for value. [*Proceed with paragraphs III, IV, and V, as in Form 904 or 905.*]

[*Prayer for judgment.*]

**908. Allegation of excuse for nonpresentment, maker not found.<sup>3</sup>**

[*Insert in place of allegation III, in Forms 904 or 905 the following*]:

III. That at the maturity of said note the plaintiff caused to be made diligent search and inquiry for said [*maker*] at [*the place of date*] in order that the same might be duly presented to him for payment, but he could not be found, and the same was not paid, and said note was then and there duly protested for nonpayment, of all which due notice was given to the defendant.

<sup>3</sup> If payment was to be made at a particular place, presentment and demand should be made at that place, even though the maker be not there,

and such presentment and demand alleged as in preceding forms; but if no place of payment is specified in the note this form should be used.

**909. Allegation of waiver of demand and notice before or at maturity.**

[Insert in place of allegation III in Forms 904 or 905 the following]:

III. That thereafter, and before maturity, [or at maturity] of said note, said indorser [defendant] duly waived [in writing upon the back of said note] presentment to and demand of payment from said [maker] and notice to the defendant of the nonpayment thereof.

**910. The same, waiver after maturity.**

[Insert in place of allegation III in Forms 904 or 905 the following]:

III. That the defendant, knowing that plaintiff had failed to present said note for payment, and to notify defendant of the non-payment thereof, heretofore [or, on or about the .... day of ....., 19..] waived said omission and promised to pay said note to the plaintiff.

**911. Against endorser on a note of doubtful validity as against the maker.**

I. That on or about the .... day of ....., 19.., the defendant indorsed and delivered to plaintiff a promissory note, made [or, purporting to have been made] by one M.... N.... on the .... day of ....., 19.., at ..... for the sum of ..... dollars, payable to the order of defendant [or one O.... P....] .... days after date [and indorsed and delivered before maturity by the said O.... P.... to the defendant].

[Proceed as in Form 904, allegations III, IV, and V.]

[Prayer for judgment.]

**912. Indorsee against maker and indorsing payee.**

I. That heretofore the defendant [maker] [or the defendants, makers, under their firm name of W.... X.... & Co.] made and delivered his [their] promissory note in writing\* dated on the .... day of ....., 19.., at ....., and thereby promised to pay to the order of the defendant [indorser] [or to the order of the defendants, indorsers, under their firm

name of Y.... Z.... & Co.] ..... dollars, .... days after said date [or on, etc.] [Or after the \* set forth copy of note].

[Proceed as in Forms 904 or 905, depending upon whether legal effect of the note is pleaded or copy set out.]

[Prayer for judgment.]

### 913. Remote indorsee against maker and two indorsers.

I. [As in last preceding form.]

II. That the defendants [payees] [under their said firm name] thereafter and before maturity thereof indorsed the said note and delivered the same so indorsed.

III. That thereafter and before maturity, the defendants [naming later indorsers] [under their firm name of C.... D.... & Co.] indorsed the same [in blank] and delivered it so indorsed, and thereafter and before its maturity it lawfully came to the possession of the plaintiff for value.

[Proceed as in Forms 904 or 905 beginning with paragraph III.]

[Prayer for judgment.]

### 914. By payee against maker and indorser to give credit.\*

I. That on or about the .... day of ....., 19.., at ..... the defendant C.... D.... made his promissory note in writing \* dated on that day, and thereby promised to pay to the order of the plaintiff at ..... the sum of ..... dollars, .... months after said date [or on, etc.] [Or after the \* insert: of which the following is a copy, setting out exact copy of note].

II. That at the time of the making of said note, and prior to its delivery to plaintiff, the defendant E.... F.... indorsed said note for the purpose of inducing the plaintiff to accept the same and extend credit thereon, and with intent to charge himself as first indorser thereupon.

\*One who indorses a note before delivery in order to give credit to the maker is regarded as an indorser in all states which have adopted the negotiable instrument law, and hence it is necessary in all such states to allege protest, dishonor and notice. That law has been adopted in all the states

covered by this work except California and Texas. In California however, the statute provides that "one who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon, as an indorser." (Cal. C. C. 1906 sec. 3117.)

III. That thereupon the defendant C.... D.... delivered said note so indorsed to plaintiff, and that plaintiff, upon the credit of said endorsement, accepted said note and gave value therefor.

[Proceed as in Forms 904 or 905 beginning with paragraph III.]

[Prayer for judgment.]

**915. Against maker and irregular indorser of non-negotiable note.<sup>5</sup>**

I. That heretofore [or on or about the .... day of ..... 19..] the defendant A.... B.... [maker], for value received, made his certain promissory note in writing, of which the following is a copy:

“On demand I promise to pay to C.... D.... ..... dollars, for value received, with interest from ....., 19.., at .... per cent per annum.

A.... B....”

Indorsed “E.... F....”

II. That prior to the delivery of the note the said defendant E.... F...., for valuable consideration and for the purpose of inducing plaintiff to sell and deliver certain merchandise to the defendant A.... B.... and accept said note therefor, placed his name upon and delivered to plaintiff said note so indorsed in order to secure payment thereof to plaintiff, and for the purpose of becoming liable to plaintiff for such payment, and said defendant thereby became liable to plaintiff for the payment thereof.

III. That plaintiff, relying upon the representations of the defendants, and upon the said indorsement, was thereby induced to and did sell and deliver said merchandise to said A.... B.... and accept said note to secure payment therefor.

IV. That thereafter the said note was delivered to the plaintiff, who is and ever since has been the legal holder and owner thereof, for value, and that there is due thereon from the defendants to plaintiff the sum of ..... dollars, which plaintiff claims.

[Prayer for judgment.]

<sup>5</sup> An indorser of a non-negotiable note before delivery, for the purpose of giving credit to the maker, is an

original promisor. *Gorman v. Ketchum*, 33 Wis. 427; *McMullen v. Rafferty*, 89 N. Y. 456.



**916. By assignee against maker of negotiable note not indorsed.**

[*Allege execution and delivery of note, as in Forms 883 or 884.*]

II. That A.... B.... [payee] before maturity [or before this action] assigned and delivered said note to the plaintiff for a valuable consideration.

III. [*Allege nonpayment, ownership, &c., as in Forms 883 or 884.*]

[*Prayer for judgment.*]

**917. On note of a state bank.**

I. That the defendant is a corporation, created by and under the laws of this state, organized pursuant to Chapter ... of the Revised Statutes of this State and the acts amending the same, and was such corporation so organized at the times hereinafter set forth, and that their place of business then was, and still is, in the city of ..... in this state.

II. That on the .... day of ....., 19.., the defendant, being such corporation, by its agents duly authorized thereto, made and executed its certain promissory note in writing, bearing date on said day, whereby it promised to pay to the bearer on demand, at its place of business within this state, the sum of ..... dollars, and for value received delivered the same to some person unknown to this plaintiff, and loaned and circulated the same as money, according to the ordinary course of banking business as regulated by the laws and usages of this state.

III. That thereafter said promissory note was duly transferred and delivered to this plaintiff for value, and he was at the time hereinafter stated possessed of the same, and became, and was, and still is the lawful owner and holder thereof.

That on the .... day of ....., 19.., between the hours of ten and three o'clock, and during the usual hours of business, this plaintiff, duly presented the said note to the defendant at its said place of business, and where said note was payable, and lawfully demanded the payment and

redemption of said note, which the defendants then and there refused, and no part of the same has been paid.

[*Prayer for judgment.*]

**918. On lost note (Wis. Stats. 1913 secs. 4190-4191; Minn. Gen. Stats. 1913 secs. 8433, 8434).**

I. That on . . . . ., 19.., defendant made and delivered to plaintiff his promissory note, dated on that day, of which the following is a copy [*give copy of note*].

II. That while plaintiff was the owner and holder of said note, and before the same fell due the plaintiff accidentally lost said note and the same has never been found.

III. That on . . . . ., 19.., when said note became due and payable, plaintiff notified defendant of said loss and tendered to him a sufficient bond of indemnity, signed by plaintiff as principal and A.... B.... and C.... D.... as sureties, conditioned to indemnify defendant, his heirs and personal representatives, against all claims by any other person on account of said note, and against all costs and expenses by reason of such claims, and requested defendant to pay said note, but it has not been paid.

IV. That plaintiff herewith brings said bond into court and tenders the same to defendant.

WHEREFORE, etc.

**919. Against maker and guarantor of note.**

I. That on . . . . ., 19.., defendant A.... B.... made and delivered to plaintiff his promissory note, of which the following is a copy: [*Copy of note.*]

II. That at the same time defendant C.... D.... for a valuable consideration, guaranteed the payment of said note by indorsing thereon the following words, "For value received I guarantee the payment of the within note," subscribing his name thereto, and delivering said note so guaranteed to plaintiff.

III. That no part of said note has been paid.

WHEREFORE, etc.

920. **Complaint by sheriff upon a note held by him under a writ of attachment (Wis. Stats. 1913 sec. 2749).**

I. That the plaintiff is and was at the dates hereinafter named the sheriff of ..... county, Wisconsin, duly elected, qualified and acting.

II. That on the .... day of ....., 19.., a writ of attachment was duly issued out of the ..... court in an action wherein [*name the parties plaintiff and defendant*] and the same was on said day placed in the hands of the plaintiff to be executed; that said writ contained the commands required by law to be contained in writs of attachment, and was accompanied by the affidavit and written undertaking required by the statutes of Wisconsin in such cases.

III. That the plaintiff duly executed said writ by serving the same and accompanying affidavit and undertaking on the defendant in said writ, and by attaching the following described personal property, to-wit: [*describe the same*], which was by the appraisers duly appointed upon such levy to appraise the same duly appraised, and is in fact of the value of ..... dollars; which property the plaintiff by virtue of such levy took into his possession and custody, and that said writ and attachment have never been vacated, modified, traversed or released, but still remain of full force.

IV. That among the property and evidences of debt so levied upon is the following hereinafter described note, which when so attached was the property of said [*name defendant in attachment*].

V. That, as the plaintiff is informed and believes, the above-named defendant, heretofore, to-wit, on the .... day of ....., 19.., at ....., made and delivered his certain promissory note dated that day to the said [*name defendant in attachment*], whereby he promised to pay the said [*name defendant in attachment*] the sum of ..... dollars, .... after date, with interest at the rate of .... per cent per annum from date till paid [*or other terms as note may be*].

VI. That by virtue of said levy and attachment the plaintiff is the lawful owner and holder of said note, and there is due to him thereon, by virtue of the premises, the sum of .... dollars and interest thereon, the .... day of .....,

19., which the plaintiff seeks to recover for the use of said plaintiff in attachment and by his direction.

WHEREFORE, etc.

### 921. Complaint by partnership on note (Texas).

A.... B.... and C.... D...., Plaintiffs, vs. E.... F.... and G.... H...., Defendants.
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In the ..... Court of the  
State of Texas,  
For the County of .....

To the Honorable Judge of said Court:

THE PETITION of A.... B.... and C.... D...., who at the times hereinafter mentioned were and still are partners, doing business under the firm name and style of A.... B.... & Co., plaintiffs, against E.... F.... and G.... H.... who, at the times hereinafter mentioned, were and still are partners, doing business under the firm name and style of E.... F.... & Co., defendants, respectfully show-eth;

I. That heretofore, to-wit, on the .... day of ....., 19., the said defendants made, executed and, for valuable consideration, delivered unto plaintiffs their certain promissory note, in writing, for the sum of ..... dollars and .... cents, bearing date ....., 19., and payable in the county of ..... to the order of plaintiffs, ..... days after date with interest at the rate of ..... per cent per annum from ..... until paid.

That the plaintiffs, as partners aforesaid, are now the owners and holders of said note and that no part thereof has been paid.

WHEREFORE plaintiffs pay for citation against said defendants, and for judgment for the amount of their aforesaid demand, with interest, attorneys fees and costs and for general relief.

## CHAPTER XXI.

### COMPLAINTS ON BILLS OF EXCHANGE.

- |  |   |
|--|---|
| 922. Payee against acceptor.                                 | 932. On a bill payable at sight, or at a certain time, for non-payment. |
| 923. The same, pleading copy of bill.                        | 933. The same, bill not having been presented because countermanded.    |
| 924. The same, on acceptance not according to terms of bill. | 934. The same, bill not presented because drawee not found.             |
| 925. The same, against acceptor for honor.                   | 935. The same, demand and notice waived.                                |
| 926. The same, on a bill drawn and accepted by same person.  | 936. By payee against drawer and acceptor.                              |
| 927. The same, on a bill payable from a particular fund.     | 937. By payee, against drawer and acceptor for honor.                   |
| 928. On written promise to accept bill.                      | 938. By first indorsee against first indorser.                          |
| 929. By payee against drawer for non-acceptance.             | 939. Indorsee of bill against drawer, acceptor and indorser.            |
| 930. The same, pleading copy of bill.                        |   |
| 931. The same, against corporation drawer.                   |   |

#### 922. Payee against acceptor.

I. That on the . . . . day of . . . . ., 19. . . , at . . . . . one C. . . . D. . . . [or certain persons, under their firm name of C. . . . D. . . . & Co.] made his [their] bill of exchange in writing, dated on that day, directed to the defendant [or to the defendants under their firm name of E. . . . F. . . . & Co.] at . . . . ., and thereby required the defendants to pay to the order of the plaintiff [or, of these plaintiffs, under their firm name of A. . . . B. . . . & Co.] . . . . . dollars, . . . . days after said date [or otherwise] for value received.

II. That thereupon [or on the . . . . day of . . . . ., 19. . . , at . . . . .] the defendant [or the defendants, under said firm name] upon sight thereof accepted said bill.

III. That no part of said bill has been paid [except the sum of, &c.], and that the plaintiff is now the owner and holder of the same, and there is now due thereon the sum of . . . . . dollars, with interest, &c.

[Prayer for judgment.]



**923. The same, pleading copy of bill.**

I. That on the .... day of ....., 19.., at ..... the defendant [*or* the defendants, under their firm name of E.... F.... & Co.] accepted and delivered to the plaintiff a bill of exchange, of which the following is a copy: [*set forth exact copy of the bill and acceptance*].

II. That there is now due to the plaintiff thereon from the defendant the sum of ..... dollars with [..... dollars damages and] interest, &c., which the plaintiff claims.

[*Prayer for judgment.*]

**924. The same, on acceptance not according to terms of bill.**

I. [*Follow either of two preceding forms.*]

II. That thereupon [*or* on the .... day of ....., 19.., at .....] the defendant [*or* the defendants, under said firm name] upon sight thereof, accepted the same, payable at .... days [*or otherwise*] after the date of said bill [*or* after said *date of acceptance*].

III. [*Follow appropriate preceding form.*]

[*Prayer for judgment.*]

**925. The same, against acceptor for honor.**

I. That on the .... day of ....., 19.., at ..... one C.... D.... [*or* certain persons, under their firm name of C.... D.... & Co.] made and delivered to the plaintiff, his [*or* their] bill of exchange in writing, dated on that day, and directed the same to one E.... F.... [*or*, to certain persons, under their firm name of, &c. [and thereby required said E.... F.... to pay to the order of this plaintiff [*or* of these plaintiffs, under their firm name of A.... B.... & Co.] the sum of ..... dollars, .... days after date thereof [*or otherwise*] for value received.

II. That then and there [*or* on the .... day of ....., 19.., at .....] it was duly presented to said E.... F.... for acceptance, but was not accepted, and was thereupon duly protested for nonacceptance, of all which due notice was given to said [*drawers*].

III. That then and there [*or* on the .... day of ....., 19.., at .....] the defendant [*or* the defendants, under their

firm name of G.... H.... & Co.] upon sight thereof, accepted said bill for the honor of said [drawer].

IV. That at maturity the same was duly presented for payment to said E.... F.... [the drawee] but was not paid, and was thereupon duly protested for nonpayment, of all which due notice was given to the defendant [acceptor for honor] and to said M.... N.... [drawer].

V. That no part of the same has been paid [except the sum of, &c.] and that the plaintiff is now the owner and holder of said bill.

[Prayer for judgment.]

**926. The same, on a bill drawn and accepted by same person.**

I. That on the .... day of ....., 19.., at ..... the defendant [or, the defendants, under their firm name of C.... D.... & Co.] made and accepted and delivered to the plaintiff his [their] bill of exchange in writing, of which the following is a copy; [Set forth exact copy of the bill and acceptance].

II. That there is now due to the plaintiff thereon, from the defendant, the sum of ..... dollars, with interest from, &c., which the plaintiff claims.

[Prayer for judgment.]

**927. The same, on a bill payable from a particular fund.**

I. That on the .... day of ....., 19.., at ..... one C.... D.... made his [or certain persons, under their firm name, &c., made their] bill of exchange or order in writing, dated on that day, and directed it to the defendant [or to the defendants, under their firm names of, &c.] and thereby required the defendant to pay to one E.... F.... out of the proceeds of [state fund as in the bill] ..... dollars, .... days after the date [or sight] thereof [or otherwise] for value received, and delivered it to said [payee].

II. That on the .... day of ....., 19.., at ..... [or then and there] upon sight thereof, the defendant accepted the same, payable when in funds, from the proceeds of, &c. [state terms of acceptance as made].

III. [*If plaintiff is assignee of the bill, state assignment as follows*]: That on the .... day of ....., 19.. at ..... said [payee] duly assigned said bill for value to this plaintiff.

IV. That on the .... day of ....., 19.., the defendant had in his hands funds of the said [drawer] to the amount of ..... dollars, being the proceeds of [*state fund as in bill*].

V. That payment of said bill was, on the .... day of ....., 19.., at ..... duly demanded by this plaintiff from the defendant, but was refused.

VI. That no part thereof has been paid [except the sum of, &c.] and that plaintiff is now the owner and holder thereof.  
[*Prayer for judgment.*]

### 928. On written promise to accept bill.

I. That on or about the .... day of ....., 19.., at ....., the defendant, for value received, promised in writing to accept sight drafts to the amount of ..... dollars to be drawn by the firm of A.... B.... & Co., as drawers, on him, the defendant, as drawee.

II. That in pursuance of said written promise, the said firm of A.... B.... & Co., at ..... on the .... day ....., 19.., drew their certain bill or draft on the said defendant, in words and figures following: [*set out exact copy of bill*].

III. That the plaintiff, relying upon the faith of the said written promise of defendant to accept the said bill, received the same for a valuable consideration, and paid therefor the said sum of ..... dollars, and is now the owner and holder of said bill.

IV. That plaintiff thereafter, and on or about the .... day of ....., 19.., caused the said bill to be duly presented to defendant for acceptance, and payment and demanded of defendant that he should accept and pay the same, and that he declined and refused to accept or pay said bill, whereupon the said bill was duly protested for non-acceptance, and of which demand of acceptance, non-acceptance and non-payment defendant and said firm of A.... B.... & Co. had due notice.

V. That said bill is now owned and held by the plaintiff, that the same remains wholly unpaid, and there is now due and owing thereon the sum of ..... dollars, with interest thereon from ..... 19.., which plaintiff claims.

**929. By payee against drawer for non-acceptance.**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . . the defendants [*drawers*] [under their firm name of C. . . . D. . . . & Co.] made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one E. . . . F. . . . [*or to certain persons, under their firm name of E. . . . F. . . . & Co.*] and thereby required said [*drawee*] to pay to the order of this plaintiff [*or of these plaintiffs, under their firm name of A. . . . B. . . . & Co.*] . . . . . dollars . . . . days after the date [*or sight*] thereof, for value received.

II. That the same was thereafter duly presented to [*the drawee*] for acceptance, but was not accepted, and was thereupon duly protested for non-acceptance, of all which due notice was given to the defendant [*drawer*].

III. That the cost of such protest was . . . . . dollars, which the plaintiff has paid.

IV. That no part of the same has been paid [except the sum of, &c.] and that plaintiff is now the owner and holder of said bill, and there is now due thereon the sum of . . . . . dollars [with . . . . . dollars damages<sup>1</sup>] and interest from, &c.

[*Prayer for judgment, including damages if recoverable.*]

**930. The same, pleading copy of bill.**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . . the defendants [*drawers*] [under their firm name of C. . . . D. . . . & Co.] made and delivered to the plaintiff their bill of exchange in writing, of which the following is a copy: [*Set out exact copy of the bill*].

II. That the same was duly presented to [*the drawee*] therein named for acceptance, but was not accepted, and was thereupon duly protested for non-acceptance, of all which due notice was given to the defendant [*drawer*].

III. That the cost of such protest was . . . . . dollars, which was paid by the plaintiff.

<sup>1</sup>When by statute damages are recoverable upon protested bills of exchange, the complaint should allege the amount and demand judgment therefor. Wis. Stats. 1913 sec. 1682, 1683; Cal. C. C. P. 1906 secs. 3234-

3238; Mo. R. S. 1909 sec. 10166-10171; N. Dak. Rev. Codes 1905 sec. 6541-6543; Okla. Comp. Laws 1909 sec. 4730-4731; Tex. Civ. Stats. Ann. 1913 art. 592.

IV. That there is now due to the plaintiff thereon the sum of ..... dollars, [with ..... dollars damages] and interest from, &c., which the plaintiff claims.

[*Prayer for judgment.*]

**931. The same, against corporation drawer.**

I. [*Allege incorporation of defendant, as in Forms 848 and 849.*]

II. [*Allege making and delivery of bill, as in last preceding forms.*]

III. That the same was duly presented to said C.... D.... [*drawee*] for payment, but payment thereof was refused, and the same was thereupon duly protested for non-payment, of all which due notice was given to the defendant.

IV. That the cost of said protest was ..... dollars, which sum was paid by the plaintiff and has not been repaid to him.

V. That plaintiff is now the owner and holder of said bill, that no part thereof has been paid, and there is now due from defendant to plaintiff thereon the sum of ..... dollars, with interest, &c., which the plaintiff claims.

[*Prayer for judgment.*]

**932. On a bill payable at sight, or at a certain time, for non-payment.**

I. That on the .... day of ....., 19.., at ....., the defendants [*drawers*] [under their firm name of, &c.] made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one C.... D.... [or to certain persons, under their firm name of, &c.] and thereby required said [*drawee*] to pay to the order of this plaintiff [or, of these plaintiffs, under their firm name of, &c.] ..... dollars on the .... day of ....., 19.., [or, at sight, or .... days after the date thereof, or otherwise] for value received.

II. That the same was duly presented to [*the drawee*] for payment but was not paid, and was thereupon duly protested for non-payment, of all which due notice was given to the defendant [*drawer*].

III. [*Allege ownership, non-payment, &c., as in preceding forms.*]



IV. That no part of the same has been paid [except the sum of, &c.]

[*Prayer for judgment.*]

**933. The same, bill not having been presented because countermanded.**

I. [*Allege making and delivery of bill, as in immediately preceding forms.*]

II. That on or about the . . . . day of . . . . ., 19.., said bill not then having been presented for acceptance [or for payment], the defendant countermanded the same and instructed the said [*drawee*] not to accept or pay [or, if payable at sight, not to pay] the same; wherefore said bill was not presented to the said [*drawee*].

III. [*Allege ownership, non-payment, &c., as in preceding forms.*]

[*Prayer for judgment.*]

**934. The same, bill not presented because drawee not found.**

I. [*Allege making and delivery of bill, as in immediately preceding forms.*]

II. That on or about the . . . . day of . . . . ., 19.., the plaintiff caused diligent search and inquiry to be made for said drawee at [*the place of address*] in order that the said bill might be presented to him for acceptance, but he could not be found, and the same was not accepted, and was thereupon duly protested for non-acceptance, of all which due notice was given to the defendant [*drawer*].

III. [*Allege payment of protest fees, also ownership and non-payment, as in preceding forms.*]

[*Prayer for judgment.*]

**935. The same, demand and notice waived.**

I. [*Allege making and delivery of bill, as in preceding forms.*]

II. That the defendant at the time said bill was executed and delivered by him, waived as well the presentation of the same to said C. . . . D. . . . for payment, as notice of the non-payment thereof, and no part thereof has been paid.

III. [*Allege ownership, as in preceding forms.*]

[*Prayer for judgment.*]

**936. By payee against drawer and acceptor.**

I. That on the .... day of ....., 19.., at ..... the defendants [*drawers*] [under their firm name of C.... D.... & Co.] made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to the defendant [*acceptor*; or, to the defendants, *acceptors*, under their firm name of E.... F.... & Co.] and thereby required said [*acceptor*] to pay to the order of the plaintiff [or of the plaintiffs, under their firm name of A.... B.... & Co.] ..... dollars, .... days after the date thereof [or otherwise] for value received.

II. That then and there [or on the .... day of ....., 19.., at .....] the defendant [*acceptor*] upon sight thereof, accepted said bill.

III. That at maturity the same was duly presented to the defendant [*acceptor*] for payment, but was not paid and was thereupon duly protested for non-payment, of all which due notice was given to the defendant [*drawer*].

IV. That no part of the same has been paid, and that the cost of such protest was the sum of ..... dollars, which was paid by this plaintiff and has not been repaid to him.

[*Prayer for judgment.*]

**937. By payee, against drawer and acceptor for honor.**

I. That on the .... day of ....., 19.., at ..... the defendants [*drawers*] [under their firm name of C.... D.... & Co.] made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one E.... F.... [or, to certain persons, under their firm name of E.... F.... & Co.] and thereby required said [*drawee*] to pay to the order of this plaintiff [or of these plaintiffs, under their firm name of A.... B.... & Co.] ..... dollars, .... days after the date thereof [or otherwise] for value received.

II. That then and there [or on the .... day of ....., 19.., at .....] said bill was duly presented to said [*drawee*] for acceptance, but was not accepted, and was thereupon duly protested for non-acceptance, of all which due notice was given to the defendant [*drawer*].

III. That then and there [or, on the .... day of ....., 19.., at .....] the defendant [*acceptor for honor*] upon

sight thereof, accepted said bill for the honor of said [*drawer*].

IV. That at maturity the same was duly presented for payment to said [*drawee*] but was not paid, and was thereupon duly protested for non-payment, of all which due notice was given to the defendants [*drawers*].

V. That thereupon the same was duly presented to the defendant [*acceptor for honor*] for payment, but was not paid, and was thereupon duly protested for non-payment, of all which due notice was given to the defendants [*drawers*].

VI. That the plaintiff necessarily paid the costs of the said various protests, amounting to the sum of . . . . . dollars, none of which has been repaid to him.

VII. That said bill is now held and owned by plaintiff, and no part thereof has been paid.

[*Prayer for judgment.*]

### 938. By first indorsee against first indorser.

I. That on . . . . ., 19.., one E.... F.... made and delivered to defendant his bill of exchange on one G.... H...., of which the following is a copy: [*Copy of bill.*]

II. That on . . . . ., 19.., the said E.... F.... accepted the same.

III. That thereafter defendant indorsed the same to plaintiff.

IV. That on . . . . ., 19.., the same was duly presented to the said G.... H.... for payment, but was not paid, whereupon the same was duly protested for non-payment, at a cost of \$...., which plaintiff paid.

V. That defendant was given due notice of said presentment and non-payment and protest but that neither said bill nor the cost of said protest has been paid.

WHEREFORE, etc.

### 939. Indorsee of bill against drawer, acceptor and indorser.

I. That on . . . . ., 19.., defendant C.... D.... made and delivered to defendant G.... H.... his bill of exchange on defendant E.... F...., of which the following is a copy: [*Insert copy.*]

II. That defendant E.... F.... accepted the said bill on the .... day of ....., 19.. and that thereafter the defendant G.... H.... indorsed the same to the plaintiff.

III. That on ....., 19.., the same was duly presented to defendant E.... F.... for payment, but was not paid, whereupon the same was duly protested for non-payment at a cost of ..... dollars, which plaintiff paid.

III. That defendants C.... D.... and G.... H.... were given due notice of said presentment, non-payment and protest.

V. That no part of said bill has been paid.

WHEREFORE, etc.

## CHAPTER XXII.

### COMPLAINTS ON CHECKS AND CERTIFICATES OF DEPOSIT

- |   |  |
|---|--|
| 940. Payee against drawer, pleading legal effect.                         | 944. Indorsee or bearer against drawer.              |
| 941. The same, pleading copy.   | 945. Indorsee or bearer against drawer and indorser. |
| 942. The same, alleging excuse for failure to give notice of non-payment. | 946. Against bank, on a certified check.             |
| 943. The same, alleging excuse for non-presentment.                       | 947. Upon a certificate of deposit by indorsee.      |

It may be stated as a general principle that presentment and notice of non-payment are necessary to charge the drawers of a check. The ordinary check, being payable on demand, must be presented for payment within a reasonable time after its issuance, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. Twenty-four hours, as a general rule, is allowed for presentment of a check after its issuance. *Grange v. Reigh*, 93 Wis. 552; 67 N. W. 1130. If the drawees have failed and suspended business, or if they have no funds in their hands belonging to the drawer, presentment and notice of non-payment are not necessary, but the fact excusing non-presentment should be alleged in the pleading.

#### 940. Payee against drawer, pleading legal effect.

I. That on the . . . . day of . . . . ., 19. . ., at. . . . . the defendant made and delivered to the plaintiff his check in writing, dated on that day, and directed the same to the Bank of M. . . . N. . . . [or to certain persons, under the firm name, &c.] and thereby required said [*drawee*] to pay to the plaintiff or order [or bearer] . . . . . dollars, for value received.

II. That the same was duly endorsed by the plaintiff and presented to the said [*drawee*] for payment, but was not paid, of all which due notice was given to the defendant [*drawer*].



III. That no part of the same has been paid.  
WHEREFORE, etc.

**941. The same, pleading copy.**

I. That on the .... day of ....., 19.., at ..... the defendant drew and delivered to plaintiff his check in writing, of which the following is a copy:

First National Bank of ..... pay to A.... B.... or order [or bearer] ..... dollars, for value received.  
C.... D....”

II. That thereafter said check was duly endorsed by plaintiff, and on the .... day of ....., 19.., was duly presented to the said bank for payment, but was not paid, of all of which said defendant had due notice.

III. That no part thereof has been paid and there is due the plaintiff thereon from defendant ..... dollars, with interest from the .... day of ....., 19..

WHEREFORE, etc.

**942. The same, alleging excuse for failure to give notice of non-payment.**

*[Proceed as in either of the two preceding forms, inserting in place of paragraph II the following]:*

II. That thereafter the same was duly endorsed by plaintiff, and was duly presented to said [drawee] for payment, but the defendant has no funds with said [drawee] and no part of the same has been paid.

WHEREFORE, etc.

**943. The same, alleging excuse for non-presentment.**

*[Proceed as in preceding forms, inserting the following in place of paragraph II]:*

II. That on the .... day of ....., 19.., said [drawee] was insolvent [or, had stopped payment] and no part of the same has been paid.

WHEREFORE, etc.

**944. Indorsee or bearer against drawer.**

I. That on the .... day of ....., 19.., at ..... the defendant made his check in writing, dated on that day, and

directed the same to the bank of M.... N.... [or, to certain persons, under their firm name, of &c.] and thereby required said [*drawees*] to pay to one E.... F.... or order [or bearer] ..... dollars, for value received.

II. That defendant then and there delivered the same to said E.... F.... [*if payable to order, add: who indorsed the same and delivered it so indorsed*], and the same thereafter came lawfully to the possession of this plaintiff.

III. That thereafter the same was duly presented to said [*drawee*] for payment, but was not paid, of all which due notice was given to the defendant.

IV. That no part of the same has been paid.

WHEREFORE, etc.

#### 945. Indorsee or bearer against drawer and indorser.

I. That on the .... day of ....., 19.., at ..... the defendant [*drawer*] made his check in writing, dated on that day, and directed the same to the bank of M.... N.... [or, to certain persons under the firm name, &c.], and thereby required said [*drawee*] to pay to the defendant [*indorser*] or order [or bearer] ..... dollars, for value received, and delivered it to the defendant [*indorser*].

II. That thereupon said defendant [*indorser, or, the defendants, indorsers, under their firm name of, &c.*] indorsed the same to this plaintiff [*or, indorsed the same and delivered it so indorsed, and thereafter it came lawfully into the possession of this plaintiff*] for value.

III. That said check was thereafter duly presented to the said [*drawee*] for payment, but was not paid, of all which due notice was given to defendants.

IV. That no part of the same has been paid.

WHEREFORE, etc.

#### 946. Against bank, on a certified check.

I. That the defendant is a corporation duly incorporated under the laws of this state, and doing a banking business at the .... of ..... in said state.

II. That on the .... day of ....., 19.., at ..... one M.... N.... made his check [or, certain persons, under their firm name of M.... N.... & Co., made their check] in writing, bearing date on that day, and directed it to the

defendant, and thereby required it to pay to this plaintiff or order [or bearer] . . . . . dollars, for value received; and delivered the same to this plaintiff [or, *if payable to a third party, state it as in preceding form*].

III. That then and there [or, on the . . . . day of . . . . ., 19.., at . . . . .] the defendants, by their agent duly authorized thereto in writing, accepted the said check and certified the same to be good.

IV. That thereafter the same was duly presented for payment, but no part thereof has been paid.

WHEREFORE, etc.

#### 947. Upon a certificate of deposit by indorsee.

I. [*Allege defendant's corporate capacity if the action be against a corporation, as in last preceding form.*]

II. That on or about the . . . . day of . . . . ., 19.., the defendant, in consideration of the sum of . . . . . dollars, then paid to it, issued a certain certificate of deposit to the order of one E. . . . F. . . . for the sum of . . . . . dollars, whereby defendant agreed to pay the said amount on the return of said certificate of deposit properly indorsed; the following being a true copy of the said certificate: [*insert exact copy of certificate*].

III. That the said certificate was thereafter properly endorsed by said E. . . . F. . . . and was transferred and for value delivered to the plaintiff, and on or about the . . . . day of . . . . ., 19.., was duly endorsed by the plaintiff and presented for payment to the defendant and payment thereof was refused.

IV. That plaintiff is the lawful owner and holder of said certificate, and that no part thereof has been paid.

WHEREFORE, etc.

## CHAPTER XXIII.

### COMPLAINTS FOR MONEY LOANED, PAID, HAD AND RECEIVED.

948. For money loaned.
949. For money paid to another at defendant's request.
950. For money paid to discharge another's debt.
951. The same, amount to be repaid on a day certain.
952. By accommodation maker of note, having paid it.
953. By acceptor without funds, having paid it.
954. By indorser of note, having paid part.
955. By one joint maker of note against the other, for contribution.
956. By landlord against tenant to recover tax which tenant had agreed to pay.
957. By surety on lease, against principal.
958. By surety, on appeal bond or undertaking.
959. By surety for goods sold another.
960. The same, another form.
961. For money received, common form.
962. The same, another form.
963. For money collected by agent.
964. The same, another form.
965. For money overpaid, relying on erroneous account.
966. Money overpaid under mistake of fact.
967. For money paid on contract for services, not performed.
968. For money paid on contract to purchase real estate, not performed.
969. For money paid on contract to purchase real estate, void by statute of frauds.
970. By pledgor of collateral, to recover excess of money collected by pledgee.
971. To recover amount paid on a judgment afterwards reversed.
972. For money received by factor for goods sold.
973. Against factor for goods sold on del credere commission.
974. Against broker for proceeds of note discounted.
975. To recover usurious interest paid.
976. By employer, to recover his money lost by clerk at gambling.
977. For money advanced on forged securities.
978. To recover fees of usurped public office.
979. To recover moneys paid to defendant in bucket shop transactions.
980. For money lost at gambling or betting.
981. Against a bank to recover deposits.
982. Against note broker, for proceeds of note discounted.
983. To recover deposit on purchase of a horse on app. val.
984. By pledgee of collateral for balance of loan after applying sum realized on sale.
985. By city to recover judgment against it resulting from negligence of defendant.

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|--|---|
| <p>986. By brokers, for moneys advanced.</p> <p>987. Against one who has wrongfully disposed of plaintiff's property, the tort being waived.</p> <p>988. Against attorney at law, for money collected.</p> <p>989. By surety on note against co-surety for contribution.</p> | <p>990. By one surety, having paid a judgment, against his co-sureties.</p> <p>991. By surety against principal to recover money paid on a bond.</p> <p>992. By retiring partner on agreement of indemnity (Connecticut).</p> |
|--|---|

#### 948. For money loaned.

That on the .... day of ....., 19.., the plaintiff loaned to defendant the sum of ..... dollars, which sum defendant agreed to repay [with interest] upon demand [or, on the .... day of ....., 19..]

II. That thereafter and before this action [or, on the .... day of ....., 19..] plaintiff duly demanded payment of the same from defendant, but no part thereof has been paid [except, *state payments if any*] and defendant is now justly indebted therefor to this plaintiff in the sum of ..... dollars, with interest from the .... day of ....., 19.. [if it was to be repaid on demand, claim interest from day of demand].

WHEREFORE, etc.

#### 949. For money paid to another at defendant's request.

I. That on the .... day of ....., 19.., at the request of defendant, the plaintiff paid to one E.... F.... ..... dollars.

II. That in consideration thereof, the defendant promised to repay the same to plaintiff [on demand].

III. That [on the .... day of ....., 19.., plaintiff demanded payment of the same from defendant, but] he has not repaid the same.

WHEREFORE, etc.

#### 950. For money paid to discharge another's debt.

I. That on the .... day of ....., 19.., the plaintiff paid to one E.... F.... for the use of defendant and at his request, the sum of ..... dollars, the same being the amount of a certain promissory note then owing by defendant to said E.... F.... [or otherwise describe the debt].



II. That defendant then and there agreed to repay the same upon demand.

III. That this plaintiff on the .... day of ....., 19.., at ....., duly demanded payment of the same from defendant, but no part thereof has been paid [*or*, no part thereof has been paid except, &c.]

WHEREFORE, etc.

**951. The same, amount to be repaid on a day certain.**

I. [*As in last preceding form.*]

II. That defendant promised to repay said sum [*with interest*] to this plaintiff on the .... day of ....., 19.., but has not paid any part thereof [*except, &c.*]

WHEREFORE, etc.

**952. By accommodation maker of note, having paid it.**

I. That on the .... day of ....., 19.., the plaintiff made and delivered to defendant his promissory note, of which the following is a copy: [*Insert exact copy of note.*]

II. That plaintiff received no consideration therefor, but the same was an accommodation note given to defendant at his request and upon his promise to pay it at maturity.

III. That as plaintiff is informed and believes, defendant thereafter and before its maturity, negotiated said note for value.

IV. That defendant did not pay said note at maturity, and that plaintiff was thereupon compelled to and did, on the .... day of ....., 19.., pay the sum of ..... dollars in discharge of said note, and that no part of the said sum has been paid to the plaintiff.

WHEREFORE, etc.

**953. By acceptor without funds, having paid it.**

I. That defendant on the .... day of ....., 19.., became indebted to plaintiff for moneys advanced by him, and by him paid, in taking up a certain draft drawn by defendant, bearing date on the .... day of ....., 19.., whereby they requested this plaintiff .... days after date to pay to one E.... F.... the sum of ..... dollars.

II. That plaintiff duly accepted said draft and paid the same at maturity, without funds of the defendant in his hands to meet the same, and that no part of the same has been repaid by the defendant.

WHEREFORE, etc.

**954. By indorser of note, having paid part.**

I. That on the .... day of ....., 19.., the defendant made and delivered to this plaintiff his promissory note in writing, of which the following is a copy: [*Insert exact copy of note*].

II. That thereafter and before maturity of said note the plaintiff indorsed and negotiated it for value.

III. That at its maturity, said note was duly presented for payment to defendant [*or allege excuse for non-presentment*] but was not paid, wherefore this plaintiff had due notice, and that thereafter this plaintiff was compelled to pay and did pay, on the .... day of ....., 19.., to one E.... F.... the holder of said note, on account of the amount due thereon from defendant, the sum of ..... dollars, no part of which has been repaid to the plaintiff.

WHEREFORE, etc.

**955. By one joint maker of note against the other, for contribution.**

I. That on the .... day of ....., 19.., this plaintiff and the defendant made and delivered to one E.... F.... their joint [*or joint and several*] promissory note in writing, of which the following is a copy: [*Insert exact copy of note.*]

II. That at the maturity of said note plaintiff was compelled to pay and did pay the same; and no part thereof has been repaid to him.

WHEREFORE, etc.

**956. By landlord against tenant to recover tax which tenant had agreed to pay.**

I. That at ..... on or about the .... day of ....., 19.., plaintiff and defendant entered into an agreement, of which the following is a copy: [*Insert agreement or lease*] [*or, of which a true copy is attached hereto, made a part of this complaint, and marked Exhibit A.*]

II. That while the covenants of the aforesaid agreement were in full force, and defendant was in possession of the premises by virtue thereof, a tax of . . . . . dollars was duly levied upon the said premises, which defendant neglected to pay [and that said plaintiff was not aware, until on or about the . . . . day of . . . . ., 19.., of such neglect].

III. That by reason thereof plaintiff was, on the . . . . day of . . . . ., 19.., compelled to pay and did pay the said sum of . . . . . dollars, with . . . . . dollars arrearages of interest, amounting in the whole to . . . . . dollars.

IV. That no part thereof has been repaid.

WHEREFORE, etc.

### 957. By surety on lease, against principal.

I. That on or about the . . . . day of . . . . ., 19.., defendant entered into an agreement in writing with one E. . . . F. . . ., of which the following is a copy: [*Insert copy of lease*] [*or, an agreement in writing whereby he hired of E. . . . F. . . . the house [designating it] for the term of . . . . . and agreed to pay therefor, to the said E. . . . F. . . ., the rent of . . . . . dollars in equal quarterly installments*].

II. That at the request of defendant the plaintiff made and delivered to defendant his guaranty thereon in writing, of which the following is a copy: [*setting it forth*] [*or, his guaranty thereon in writing, whereby in consideration of one dollar plaintiff guaranteed the faithful performance on the part of the defendant of the said agreement*].

III. That defendant delivered said agreement and guaranty to E. . . . F. . . ., and thereupon and in consideration thereof, obtained and had possession of said premises, pursuant to said agreement, whereby the defendant became liable to the said E. . . . F. . . . for the rent therein named.

IV. That a portion of said rent, to-wit, the installment of . . . . . dollars which became due on the . . . . day of . . . . ., 19.., the said defendant failed to pay.

V. That plaintiff was compelled to pay, and did pay, on the . . . . day of . . . . ., 19.., to the said E. . . . F. . . . at his request and to the use of defendant, the sum of . . . . . dollars, being the aforesaid sum, with interest, and that no part of the same has been repaid to plaintiff.

WHEREFORE, etc.

**958. By surety, on appeal bond or undertaking.**

I. That on the .... day of ....., 19.., one E.... F.... recovered in the ..... court of ..... county a judgment against defendant for ..... doll: [or for the possession of specific property, &c.] from which said defendant thereafter duly appealed to the supreme court of the state of ..... [or other court].

II. That on the .... day of ....., 19.., at the request of defendant, plaintiff executed an undertaking, a copy of which is hereto annexed and marked Exhibit A, [or, whereby he undertook, *reciting the obligation*].

III. That on the .... day of ....., 19.., the said judgment was affirmed by the said supreme court with ..... dollars costs and damages.

IV. That on the .... day of ....., 19.., the plaintiff was compelled to pay and did pay ..... dollars upon the said undertaking, to the said E.... F...., and that no part of the same has been repaid to him.

WHEREFORE, etc.

**959. By surety for goods sold another.**

I. That on the .... day of ....., 19.., at ..... the plaintiff, at the request of defendant, bought of one E.... F...., to be by him delivered to defendant and to his use, certain goods, viz: ..... of the value of ..... dollars, which were thereafter delivered to defendant, but he failed to pay for them.

II. That on the .... day of ....., 19.., in an action brought to recover from plaintiff the price of said goods, said E.... F.... recovered judgment in the ..... court of ..... county against the plaintiff, then defendant, for the sum of ..... dollars, being the amount of said price, with interest and costs.

III. That plaintiff was compelled to pay, and did pay, on the .... day of ....., 19.., to said E.... F.... the sum of ..... dollars, being the amount of the said judgment, and interest thereon; and that no part of the same has been repaid to him.

WHEREFORE, etc.

**960. The same, another form.**

I. That on or about the .... day of ....., 19.., the defendant bought of one E.... F...., certain goods, viz: [*describe same*] of the value of, and for which defendant agreed to pay the sum of ..... dollars; that at the time of such sale and in consideration thereof, plaintiff, at defendant's request and upon his promise to repay to him any loss sustained thereby, guaranteed to said E.... F.... the payment by defendant of said sum of ..... dollars.

II. That said goods were thereafter delivered to defendant, but that said defendant did not pay therefor.

III. That on or about the .... day of ....., 19.., plaintiff was compelled to pay and did pay to said E.... F.... the said sum of ..... dollars in settlement of the said price of said goods. [*Or if suit was brought and a judgment entered allege the fact as in last preceding form.*]

IV. That on or about the .... day of ....., 19.., the plaintiff was compelled to pay and did pay to said E.... F.... the sum of ..... dollars, being the amount of the said judgment and interest thereon, and that no part of the same has been repaid to plaintiff.

WHEREFORE, [*etc.*]

**961. For money received, common form.<sup>1</sup>**

I. That on the .... day of ....., 19.., [*or, at sundry times between the .... day of ....., 19.., and the .... day of ....., 19..*] the defendant received from one E.... F.... [*or, received from the plaintiff*] the sum of ..... dollars, to the use of the plaintiff.

II. That thereafter, and before this action, the plaintiff demanded payment thereof from the defendant.

III. That no part thereof has been paid, [*except, &c.*]

WHEREFORE, *etc.*

**962. The same, another form.**

I. That the defendant is indebted to the plaintiff in the sum of ..... dollars for money had and received by said

<sup>1</sup>This form was held sufficient in *Grannis v. Hooker*, 29 Wis. 65, as against a demurrer *ore tenus*, and it was further held that under it the plaintiff might show that the money

sued for was procured by means of fraud. Whether the complaint is not susceptible of motion to make more definite and certain was suggested but not decided.



defendant from one E.... F....[or from the plaintiff, or from sundry persons] on or about the .... day of ....., 19.. [or at various times between the .... day of ....., and the .... day of ....., 19..] for the plaintiff's use.

II. That on the .... day of ....., 19.. [or before this action] the plaintiff demanded payment thereof from the defendant but that no part thereof has been paid.

WHEREFORE, etc.

### 963. For money collected by agent.

I. That from ....., 19.., to ....., 19.., defendant was the agent of the plaintiff in charge of the plaintiff's business of [*name business*].

II. That there was at the city of ..... in the hands of defendant, as such agent at the time such agency commenced to-wit on the ..... day of ....., 19.. the sum of .... dollars, the property of plaintiff; that during the continuance of said agency, defendant received as such agent the further sum of ..... dollars, belonging to the plaintiff, the same being the gross proceeds of said business during such period; and paid out for plaintiff in the conduct of said business the sum of ..... dollars, leaving a net balance in his hands for the use of plaintiff of ..... dollars, no part of which has been paid to plaintiff except the sum of ..... dollars, leaving a balance still unpaid of ..... dollars.

III. That on ....., 19.., plaintiff demanded of defendant the payment of said sum of ..... dollars, but no part thereof has been paid.

WHEREFORE, etc.

### 964. The same, another form.

I. That at and prior to the dates hereinafter mentioned the defendant was the agent of the plaintiff for the purpose of collecting and paying over to the plaintiff moneys due the plaintiff for goods sold in his business as a merchant.

II. That defendant, as such agent, between the .... day of ....., 19.., and the .... day of ....., 19.., collected and received certain sums amounting in all to the sum of ..... dollars, as more particularly set forth in Exhibit A hereto attached.

III. That there is now due and owing to plaintiff from said defendant, on account of said collections, the sum of ..... dollars.

IV. That plaintiff, prior to the commencement of this action, demanded payment thereof from defendant, but that no part thereof has been paid.

WHEREFORE, etc.

**965. For money overpaid, relying on erroneous account.**

I. That prior to the .... day of ....., 19.., plaintiff and defendant had numerous business transactions together, and that defendant, on or about the .... day of ....., 19.., rendered an account thereof to the plaintiff showing an indebtedness of plaintiff to the defendant in the sum of ..... dollars, a true copy of which account is attached hereto and marked Exhibit A.

II. That the plaintiff, supposing said account to be correct and relying thereon, paid to the defendant said amount.

III. That said account was not correctly stated, but that the following items thereof were incorrect: [*here specify erroneous items*] whereby plaintiff was overcharged the sum of ..... dollars.

IV. That plaintiff, prior to the commencement of this action, demanded payment thereof from defendant, but that no part thereof has been paid.

WHEREFORE, etc.

**966. Money overpaid under mistake of fact (adapted from *Billings vs. McCoy* 5 Neb. 187).**

I. That the plaintiff, on or about the .... day of ....., 19.., purchased of defendant 35 head of native, and 257 head of Texas cattle, and agreed to pay therefor 4½ cents per pound for the native, and 4 cents per pound for the Texas cattle, gross weight, but by agreement between plaintiff and defendant, one E.... F.... was chosen to weigh said cattle on defendant's scales, and keep an account of the actual gross weight thereof.

II. That pursuant to such agreement, said E.... F.... did weigh all of said cattle and keep an account thereof.

III. That in so weighing said cattle said E.... F.... by mistake supposed, and so stated in his said account, that

said native cattle weighed 33,530 lbs. and said Texas cattle 194,405 lbs., when in truth and in fact said native cattle actually weighed only 22,030 lbs. and said Texas cattle 180,770 lbs.

IV. That plaintiff, supposing said account so kept by said E. . . . F. . . . to be correct, and relying thereupon, paid defendant for 23,530 lbs. of said native cattle  $4\frac{1}{2}$  cents per pound, and also paid for 194,405 lbs. of said Texas cattle 4 cents per pound, amounting in all to the sum of . . . . . dollars.

V. That after the weighing of said cattle and the payment thereof as aforesaid, plaintiff ascertained that by reason of said mistake so made in the weight of said cattle, he had paid defendant for . . . . thousand pounds of cattle which he had never received, amounting in all to the sum of . . . . . dollars.

VI. [*Allege demand and refusal.*]

WHEREFORE, etc.

**967. For money paid on contract for services, not performed.**

I. That on the . . . . day of . . . . ., 19.., the plaintiff entered into an agreement with defendant, whereby defendant undertook to render his services to the plaintiff as . . . . . for the term of . . . . . in consideration of the sum of . . . . . dollars, to be paid therefor by the plaintiff.

II. That on the . . . . day of . . . . ., 19.., the plaintiff paid to defendant, on account of his services to be rendered thereafter, in pursuance of said agreement, the sum of . . . . . dollars.

III. That defendant wholly neglected and refused to render said services, [*or, refused to render any services after . . . . ., 19..*] although this plaintiff has been ready to receive and pay for the same, and that no part of said sum has been repaid to plaintiff, although frequently demanded by plaintiff prior to the commencement of this action.

WHEREFORE, etc.

**968. For money paid on contract to purchase real estate, not performed.**

I. That on the . . . . day of . . . . ., 19.., the defendant

and plaintiff entered into a contract in writing, subscribed by defendant, for the purchase by plaintiff of the defendant of certain real estate in the city of . . . . . for the sum of . . . . . dollars, to be paid therefor by plaintiff, a true copy of which agreement is attached hereto and marked Exhibit A.

II. That plaintiff then and there deposited in the hands of said defendant the sum of . . . . . dollars as a part of the said purchase money of said real estate in case such sale should be completed and a deed conveying good title should be delivered by defendant as in said agreement specified, but to be returned to him if defendant should fail to fulfill said agreement.

III. That plaintiff duly performed all the conditions of said contract on his part, and on the . . . . day of . . . . ., 19.., duly offered the defendant to receive a deed of said premises and pay the balance of the purchase money therefor.

IV. That defendant, on said . . . . day of . . . . ., 19.., failed and refused to deliver to plaintiff a deed of the premises pursuant to the agreement, and has ever since refused to deliver said deed.

V. [*Allege demand for repayment, and refusal.*]

WHEREFORE, etc.

**969. For money paid on contract to purchase real estate, void by statute of frauds (adapted from Cuddy vs. Foreman 107 Wis. 519 83 N. W. 1103).**

I. That on the . . . . day of . . . . ., 19.., and prior thereto, defendant owned certain real estate described as follows: [*insert description*] and that on said . . . . day of . . . . ., 19.., plaintiff and defendant entered into a verbal agreement by which defendant agreed to sell and convey to plaintiff the said real estate for the sum of . . . . . dollars, and said plaintiff agreed to purchase the same and pay therefor the said sum of . . . . . dollars.

II. That plaintiff then and there paid defendant the sum of \$100 as part of the purchase price of said real estate, and defendant received said sum upon said verbal agreement.

III. That no part of said agreement was ever reduced to writing, nor was any memorandum thereof made or signed by either of said parties, and that plaintiff did not at any

time take possession of said real estate, nor did defendant surrender possession thereof.

IV. That said verbal agreement was and is null and void, and that no part of the same was ever carried out, except that said \$100 was paid by plaintiff to defendant.

V. That on the .... day of ....., 19.., the plaintiff demanded repayment from defendant of the said sum of \$100 but that defendant refused to repay the same.

WHEREFORE, etc.

**970. By pledgor of collateral, to recover excess of money collected by pledgee.**

I. That on the .... day of ....., 19.., the plaintiff, being then indebted to defendant in the sum of ..... dollars, endorsed and delivered to said defendant, as a collateral security for the payment of the same, a certain promissory note [*describe note*].

II. That at its maturity the note was collected by defendant, and by the application of the moneys so received by him said indebtedness was wholly paid and extinguished.

III. That after payment of said indebtedness there remained in the hands of the defendant a balance of ..... dollars, belonging to this plaintiff, payment of which plaintiff demanded of defendant on the .... day of ....., 19.., but no part thereof has been paid.

WHEREFORE, etc.

**971. To recover amount paid on a judgment afterwards reversed.**

I. That on or about the .... day of ....., 19.., defendant recovered judgment against this plaintiff in the ..... court, in and for the county of ..... in an action wherein the defendant was plaintiff and this plaintiff was defendant, for the sum of ..... dollars.

II. That on the .... day of ....., 19.., the plaintiff was compelled to pay and did pay to defendant the sum of ..... dollars in satisfaction thereof.

III. That thereafter plaintiff duly appealed from said judgment to the .... court, and thereafter, on the .... day of ....., 19.., by the judgment of said last named court said first mentioned judgment was duly reversed; but that



no part of the sum paid in satisfaction thereof has been repaid to this plaintiff.

WHEREFORE, etc.

**972. For money received by factor for goods sold.**

I. That on the . . . day of . . . . ., 19.., the plaintiff delivered to defendant, at his request, certain goods, the property of the plaintiff, described as follows [*describe goods*] to be sold by defendant upon commission.

II. That as plaintiff is informed and believes, the defendant thereafter and prior to the . . . . . day of . . . . ., 19.., sold said goods for the sum of . . . . . dollars, which sum he thereupon received.

III. That, as plaintiff is informed and believes, the just charges of defendant for his commissions and expenses therein amount to . . . . . dollars and no more.

IV. That on the . . . day of . . . . ., 19.., the plaintiff demanded of defendant payment of the balance of said price remaining after deducting said charges, but that no part of the same has been paid.

WHEREFORE, etc.

**973. Against factor for goods sold on del credere commission.**

I. That on the . . . day of . . . . ., 19.., the plaintiff delivered to defendant, at his request, certain goods and merchandise of the plaintiff, of the value of . . . . . dollars, to sell upon commission, and defendant then promised to sell the same and to be responsible to plaintiff for the price thereof.

II. That as plaintiff is informed and believes, thereafter and on or before the . . . day of . . . . ., 19.., defendant sold said goods and merchandise for the sum of . . . . . dollars, on a credit of . . . months from the time of such sale; which credit expired before the commencement of this action, and no part of said sum has been paid to plaintiff.

III. [*As in last preceding form.*]

IV. That on the . . . day of . . . . ., 19.., the plaintiff demanded payment from defendant of the balance of said purchase price remaining after payment of said charges, but that no part of the same has been paid.

WHEREFORE, etc.

**974. Against broker for proceeds of note discounted.**

I. That on the . . . day of . . . . ., 19.., the plaintiff delivered to defendant to sell or procure to be discounted, a promissory note, the property of the plaintiff [*describe the note*], and thereupon defendant undertook to sell it or procure it to be discounted for a reasonable commission, and to pay the proceeds over to plaintiff.

II. That as plaintiff is informed and believes, on the . . . day of . . . . ., 19.., defendant procured said note to be discounted by one E. . . . F. . . . and received as the proceeds thereof the sum of . . . . . dollars.

III. [*As in preceding form.*]

IV. That plaintiff, on the . . . day of . . . . ., 19.., duly demanded from defendant payment of the sum of . . . . . dollars, being the balance of the proceeds after deducting his commission, but no part thereof has been paid.

WHEREFORE, etc.

**975. To recover usurious interest paid.**

I. That on the . . . day of . . . . ., 19.., at . . . . ., the plaintiff and defendant entered into an illegal and corrupt agreement whereby the defendant for the purpose of receiving a greater sum for the loan of his money than at the rate of [*name legal rate*] per cent per annum agreed to and did loan the plaintiff the sum of . . . . . dollars for the period of . . . . . months and the plaintiff agreed in consideration thereof to pay to the said defendant as interest on said loan for said period of time the sum of . . . . . dollars.

II. That in pursuance of said agreement, the plaintiff, besides thereafter repaying said sum of . . . . . dollars, did, on or about said . . . day of . . . . ., 19.., and within one year before the commencement of this action pay, and the defendant corruptly took and received the said sum of . . . . . dollars as interest for said loan, which was in excess of [*name legal rate*] per cent per annum, for the said period for which said loan was made in the sum of . . . . . dollars; and that by reason aforesaid the plaintiff has paid to the defendant an excess of interest amounting to the sum of . . . . . dollars.

WHEREFORE, etc.

**976. By employer, to recover his money lost by clerk at gambling.**

I. That on or about the .... day of ....., 19.., one E.... F.... was, and until about the .... day of ....., 19.., continued to be, the clerk and employee of the plaintiff.

II. That on divers days, between the .... day of ....., 19.., and the .... day of ....., 19.., the said E.... F.... unlawfully lost at play to the defendant, and the defendant unlawfully won at play, and by illegal gambling, and received from the said E.... F.... certain bank notes or bills, and moneys, the property of and belonging to said plaintiff, amounting in all to the sum of ..... dollars.

III. That all the bank notes, bills and moneys, aforesaid, were at the time the same were respectively lost by the said E.... F.... and won by the defendant, as aforesaid, the property of the plaintiff alone; that the same were so won, by the defendant at a certain game of chance known as faro; and that the said E.... F.... never received from the defendant any consideration therefor.

IV. That on or about the .... day of ....., 19.., the plaintiff demanded from the defendant all the bank notes, bills and moneys aforesaid, but the defendant refused to deliver the same, or any part thereof, to the plaintiff, but still wrongfully withholds the same from the plaintiff.

WHEREFORE, etc.

**977. For money advanced on forged securities.**

I. That on or about the .... day of ....., 19.., the said defendant being possessed of certain documents purporting to be first mortgage bonds of the ..... company, duly issued by said company and each of said so-called bonds so purporting to be for the payment and of the value of ..... dollars; that on or about the said .... day of ....., 19.., at the city of ....., the said defendant received of and from the plaintiff the sum of ..... dollars, and deposited with the plaintiff, as security for the said sum, the said pretended bonds of the ..... company.

II. That afterward, on or about the .... day of ....., 19.., the plaintiff learned, and now alleges the truth to be that the said documents, purporting to be bonds of the said

company, were forged and counterfeit, that said pretended bonds are now in the possession of the plaintiff, and are of no value whatever, and the same are ready to be delivered up to the defendant.

III. That by reason of the facts herein before alleged the said defendant, on the said day, became indebted to the plaintiff in the sum of . . . . dollars, and that the same remain wholly unpaid.

WHEREFORE, etc.

**978. To recover fees of usurped public office.**

I. That on or about the . . . . day of . . . . ., 19.., plaintiff was duly appointed by . . . . . [or elected] to fill the office of . . . . ., and thereupon duly qualified therefor by taking the official oath and filing the official bond as required by law, whereby plaintiff became entitled to hold said office and receive the fees and emoluments appertaining thereto.

II. That at said time defendant was in possession of said office; that plaintiff thereupon gave defendant notice of his appointment and qualification as aforesaid, and demanded of him to relinquish said office to plaintiff, and deliver to him the books and papers belonging to the same, all of which defendant refused to do, but unlawfully, continued to fill said office, and perform the functions thereof, and to receive the emoluments and fees thereof, from said date until about the . . . . day of . . . . . 19..

III. That defendant, while so unlawfully usurping said office, received, as plaintiff is informed and believes, as the emoluments and fees, thereof, the sum of . . . . . dollars, which rightfully belong to plaintiff, no part of which has been paid to plaintiff although plaintiff has heretofore demanded payment thereof.

WHEREFORE, etc.

**979. To recover moneys paid to defendant in bucket shop transactions.**

I. That on or about the . . . . day of . . . . ., 19.. the plaintiff delivered to the defendant the sum of . . . . . dollars.

II. That the said moneys were delivered by the plaintiff and received by the defendant upon a wager, to-wit, upon a

future market value of wheat, without intent on the part of the said plaintiff or without any intent on defendant's part of purchasing any wheat to be delivered to plaintiff, or to anyone in his behalf, but that the same was a transaction in the form of a sale, dependent upon the contingency of the market; and that the said money was received by the defendant and paid by plaintiff in the form of a purchase of . . . . bushels of wheat on account of plaintiff, to be delivered in [*state month*], but with the intent of having the transaction closed either without notice if the market value of wheat should fall to . . . . cents per bushel, or any other sum above, upon plaintiff's direction; that the transaction should be determined as if upon a sale at the market value as of the time when the transaction should be declared closed, and that the defendant should deliver to the said plaintiff, if the market should be above . . . . cents, an amount as if there had been a sale at such amount above said . . . . cents, and that the transaction would then be closed, and profit in form should be paid over to plaintiff.

III. [*Allege demand and non-payment.*]

WHEREFORE, etc.

### 980. For money lost at gambling or betting.

I. That at the city of . . . . in the state of . . . . on or about the . . . . day of . . . ., 19.. the plaintiff\* entered into a wager with the defendant by which the plaintiff wagered the sum of . . . . dollars against a like sum wagered by the defendant that [*state wager*]; and that plaintiff and defendant placed the said sums so wagered in the hands of E. . . . F. . . . as stakeholder to be paid over to the winner of said wager. [*Or, if the money was lost at cards continue after the \*:* and defendant played with each other a game of chance at cards, called poker, for stakes or sums of money by betting upon the chance of the game, or otherwise state the facts showing gaming within the statute].

II. [*If a wager, allege the payment of the money by the stakeholder to the defendant as winner of the wager; if gaming allege the payment of the money thus:* That at such sitting the said defendant, at said game of chance, won from the said plaintiff, a sum exceeding the sum of twenty-five dollars, to-wit: divers bets and stakes amounting in the aggregate



to the sum of . . . . . dollars, and in payment of said plaintiff's losses to said defendant for his winnings aforesaid, said plaintiff then and there paid to said defendant the sum of . . . . . dollars [or if paid by check say: plaintiff then and there made and delivered to the said defendant his (plaintiff's) certain check in writing on the . . . . . bank, for said sum of . . . . . dollars, which check was duly paid upon presentation] within . . . . . months before the commencement of this action.

III. That by reason of the premises aforesaid an action accrued to the said plaintiff against the said defendant according to the provisions of the statute against gaming in such cases made and provided.

WHEREFORE, etc.

#### 981. Against a bank to recover deposits.

I. That on or about the . . . . day of . . . . ., 19.., the defendant was indebted to the plaintiff in the sum of . . . . . dollars, being a balance due upon account for money had and received by said defendant, and which had theretofore been deposited by the plaintiff with said defendant, as more fully appears by a statement of said account hereto annexed, marked Schedule A, and made a part hereof. [*If deposits were to be on interest allege the fact and allege amount due for principal and interest.*]

II. That on or about the . . . . day of . . . . ., 19.., plaintiff duly demanded said sum of . . . . . dollars from said defendant, but that defendant refused to pay the same.

WHEREFORE, etc.

[*Attach statement of account.*]

#### 982. Against note-broker, for proceeds of note discounted.

I. That on or about the . . . . day of . . . . ., 19.. the plaintiff delivered to and employed the defendant to sell or procure to be discounted a promissory note, the property of the plaintiff, made by one E. . . . F. . . . [*describe the note*] which note the defendant undertook to sell or procure it to be discounted for a reasonable commission [*or, for a commission of . . . . per cent*], and to pay the balance over to the plaintiff.

II. On information and belief, that on or about the . . . day of . . . . ., 19.., the defendant procured said note to be discounted by one G. . . . H. . . . and received as the proceeds thereof the sum of . . . . . dollars.

IV. That the plaintiff, on or about the . . . day of . . . . . 19.., duly demanded from the defendant, payment of the sum of . . . . . dollars, being the balance of the proceeds after deducting his commission, but no part thereof has been paid.

WHEREFORE, etc.

**983. To recover deposit on purchase of a horse on approval.**

I. That on or about the . . . day of . . . . ., 19.., the defendant being possessed of a certain horse, agreed with the plaintiff that the plaintiff should deposit with the defendant the sum of . . . . . dollars, and that the plaintiff have the said horse on trial, on condition that if the plaintiff did not upon such trial like the said horse, and declined buying the same, he, the defendant, would take back the said horse, and return the said sum of money upon return of the said horse to the defendant.

II. That the plaintiff deposited with the defendant the said sum of money, and received the said horse on the terms aforesaid, and that plaintiff did not like the said horse on trying the same, and declined to buy the same, and has always been and now is ready and willing to return the same to the defendant.

III. That on or about the . . . day of . . . . ., 19.., plaintiff tendered the said horse to the defendant and, demanded the return to him of the said sum of . . . . . dollars, but the defendant refused to receive back the said horse from the plaintiff, or repay the said sum of money.

WHEREFORE [*etc.*]

**984. By pledgee of collateral for balance of loan after applying sum realized on sale.**

I. That on or about . . . . ., 19.., the plaintiff loaned to defendant the sum of . . . . . dollars, taking as security therefor . . . . . shares of the capital stock of the . . . . . Company; that on . . . . ., 19.., said stock was duly sold at a fair and

open sale, and the plaintiff received therefor the sum of ..... dollars, with which the defendant is entitled to be credited on account of said loan; that the amount due from the defendant on ....., 19.., for said loan and interest was the sum of ..... dollars; that after crediting the defendant said sum of ..... dollars, there remains due the plaintiff because of the premises the sum of ..... dollars, which sum has been due since ....., 19..

II. [*Allege demand for payment.*]

WHEREFORE, etc.

**985. By city to recover for judgment against it resulting from negligence of defendant.**

I. [*Allege corporate character.*]

II. *Allege the negligent or wilful creation by defendant of the obstruction, excavation or nuisance in the highway causing the injury for which the city has been held liable.*

III. That, by reason of defendant's negligence as aforesaid, one E.... F...., on or about the .... day of ....., 19.., fell into said excavation and broke his leg [*or, otherwise state the accident according to the fact.*]

IV. That thereafter said E.... F.... brought suit in the ..... court against the plaintiff to recover the damages suffered by him as aforesaid; that plaintiff defended against said action, and thereafter such proceedings were had that on the .... day of ....., 19.., a verdict was rendered against the plaintiff, upon which on the .... day of ....., 19.., judgment was duly given in said court against the plaintiff and in favor of said E.... F.... for the sum of ..... dollars; that plaintiff has heretofore paid said judgment.

V. That on or about the .... day of ....., 19.., plaintiff demanded of the defendant repayment of said sum of ..... dollars, with interest from the .... day of ....., 19.., but no part thereof has been paid [*except, etc.*].

WHEREFORE, etc.

**986. By brokers for moneys advanced.**

I. That at the times hereinafter mentioned the plaintiffs were and now are co-partners in trade, doing business as

..... in the city of ....., under the firm name and style of .....

II. That between the .... day of ....., 19.., and the .... day of ....., 19.., at the city of ....., subject to the rules and regulations of the ..... Exchange, said plaintiffs, at the request of said defendant, bought and sold for said defendant .... bales of cotton, future delivery.

III. That in and about said purchase and sale said plaintiffs, at the request of said defendant, paid out for their use and benefit the sum of ..... dollars, which said sum said defendant promised and agreed to pay to said plaintiffs, but that no part of the same has been paid, although payment of the same has been duly demanded.

IV. That a bill of the particulars of said claim is hereto annexed as part of this complaint, marked Exhibit A.

WHEREFORE, etc.

[*Attach bill of particulars.*]

**987. Against one who has wrongfully disposed of plaintiff's property, the tort being waived.**

I. That on or about the .... day of ....., 19.., the defendant, as the plaintiff's agent, sold and delivered to one E.... F.... [or to certain persons to plaintiff unknown] the following property belonging to plaintiff [*describing it*] that defendant received therefor the sum of ..... dollars.

II. [*Allege demand and non-payment.*]

WHEREFORE, [etc.]

**988. Against attorney at law, for money collected.**

I. That at all the times hereafter mentioned, defendant was and now is an attorney at law of the state of ....., engaged in the practice of his profession at .....

II. That on or about the .... day of ....., 19.., plaintiff employed said defendant as such attorney to collect of one E.... F.... the sum of ..... dollars, then due and owing from said E.... F.... to plaintiff; that on or about the .... day of ....., 19.., said E.... F.... paid said sum of ..... dollars to defendant in satisfaction of plaintiff's said claim.

III. That plaintiff has heretofore demanded of defendant the payment of said amount, less his charges for such col-

lection, but defendant has not paid the same or any part thereof.

WHEREFORE, etc.

**989. By surety on note against cosurety for contribution.**

I. That on . . . . ., 19.., one E.... F...., with plaintiff and defendant as sureties, made and delivered to G.... H.... a promissory note, of which the following is a copy: [*Insert copy of note*].

II. That at the maturity of said note the said E.... F.... had become insolvent, and plaintiff, as one of his sureties on said note, necessarily paid the whole amount due thereon amounting to . . . . . dollars.

III. That on . . . . ., 19.., plaintiff demanded of defendant that he pay him one-half of said amount as his contributive share, but no part thereof has been paid.

WHEREFORE, etc.

**990. By one surety having paid a judgment against his cosureties.**

I. That on . . . . ., 19.., a judgment was duly rendered in the . . . . . court for . . . . . county, state of . . . . ., in favor of one A.... B.... against one C.... D.... as principal, and against this plaintiff and the defendants herein, as sureties, for . . . . . dollars.

II. That the cause of action on which said judgment was rendered was a bond made by said C.... D.... as principal and this plaintiff and the defendants herein as sureties, payable to the said A.... B.... in the sum of . . . . . dollars.

III. That on . . . . ., 19.., plaintiff was compelled to and did satisfy said judgment by payment to the said A.... B.... of . . . . . dollars, the whole amount due thereon.

IV. That on . . . . ., 19.., plaintiff duly notified defendants of said payment and demanded contribution of their proportion from each, but no part thereof has been paid.

WHEREFORE, etc.

**991. By surety against principal to recover money paid on a bond.**

I. That on . . . . ., 19.., the plaintiff upon defendant's request and in reliance upon defendant's promise then made



that he would indemnify and hold harmless the plaintiff, executed as surety for the defendant a bond of which a copy is attached hereto marked Exhibit A.

II. That defendant did not save harmless nor indemnify the plaintiff, but on the contrary the plaintiff, under a judgment duly rendered against him by the . . . . . court in an action brought against him on said bond by L. . . . M. . . . the obligee named therein, was compelled to and did on . . . . ., 19.. pay . . . . . dollars in satisfaction of said judgment, together with . . . . . dollars for attorneys' fees and costs in defending said action, amounting in all to . . . . . dollars.

III. That on . . . . ., 19.., immediately upon being served with summons therein, plaintiff gave defendant herein written notice of the pendency of said action and requested him to appear and defend the same.

IV. That plaintiff duly performed all the conditions of said agreement on his part.

VI. That on . . . . ., 19.., plaintiff demanded from defendant repayment of said amounts, aggregating . . . . . dollars, with interest from . . . . ., 19.., but no part thereof has been paid.

WHEREFORE, etc.

**992. By retiring partner on agreement of indemnity  
(Conn. Pr. Act form 144).**

I. That on . . . . ., 19.., plaintiff and defendant, being partners in business under the firm name of . . . . ., dissolved said partnership, and mutually agreed that defendant should take and keep all the partnership property, pay all debts of the firm, and indemnify plaintiff against all claims that might be made upon him on account of any indebtedness of said firm.

II. That plaintiff duly performed all the conditions of said agreement on his part.

III. That on . . . . ., 19.., in an action by one E. . . . F. . . . against plaintiff and defendant on a debt due from said firm, a judgment was duly rendered by the . . . . . court for . . . . . county, against plaintiff and defendant for . . . . . dollars in favor of said E. . . . F. . . . and on . . . . .

19. ., plaintiff necessarily paid . . . . . dollars, in satisfaction of the same.

IV. That defendant has not repaid the same or any part thereof.

WHEREFORE, etc.

## CHAPTER XXIV.

### COMPLAINTS FOR GOODS SOLD.

- |   |  |
|---|--|
| 993. Seller against buyer, upon an account.                                   | 1001. By assignee for price of stock, fixtures and good will of business to be paid in instalments.  |
| 994. Seller against buyer, to recover reasonable value.                       | 1002. Against a fraudulent vendee.   |
| 995. The same, to recover agreed price.                                       | 1003. Seller against buyer, alleging written contract.   |
| 996. The same, delivery to a third person.                                    | 1004. The same, alleging partial performance and acceptance.   |
| 997. The same, avoiding defense of payment.                                   | 1005. Seller against buyer, for goods sold on trial and not returned.                                |
| 998. The same, avoiding defense of unexpired credit.                          | 1006. To recover for goods sold under fraudulent representations and to enjoin the disposal of them. |
| 999. The same, a married woman purchasing for benefit of her separate estate. |  |
| 1000. The same, for necessaries furnished to wife or children.                |  |

#### 993. Seller against buyer, upon an account.

I. That defendant is indebted to the plaintiff in the sum of ..... dollars upon an account for goods sold and delivered by the plaintiff to the defendant at his request on and between the .... day of ....., 19.. and the .... day of ....., 19.. at ..... which sum the defendant promised to pay.

II. That no part of said sum has been paid [*except, etc.*].  
WHEREFORE, etc.

#### 994. Seller against buyer, to recover reasonable value.

I. That on the .... day of ....., 19.., at ..... plaintiff sold and delivered to the defendant \* certain goods, wares and merchandise consisting of [*here describe articles*] [a true and correct list of which articles so sold is attached hereto and marked Exhibit A.]

II. That the same were reasonably worth the sum of ..... dollars.

III. That no part of the same has been paid [except, &c.]  
WHEREFORE, etc.

**995. The same, to recover agreed price.**

I. [*As in last preceding form.*]

II. That defendant then promised to pay therefor the sum of ..... dollars, [*if a credit was given add: on the .... day of ....., 19..*]

III. That on the .... day of ....., 19.., the plaintiff demanded of defendant payment of said sum.

IV. That no part has been paid [*except the sum of, etc. etc.*]

WHEREFORE, etc.

**996. The same, delivery to a third person.**

I. That on the .... day of ....., 19.., plaintiff bargained and sold to defendant and delivered to one E.... F.... at the request of defendant, [*continue as in Form 994 from the \**].

WHEREFORE, etc.

**997. The same, avoiding defense of payment.**

[*Allege sale, as in preceding forms.*]

III. That on the .... day of ....., 19.., at ..... defendant passed to this plaintiff, as in payment of his indebtedness for said goods, the check of one G.... H.... upon the bank of ..... which check defendant represented to this plaintiff to be good; but that on the contrary, said G.... H.... then had no funds at the said bank, and his said check was worthless, as the defendant then well knew [*or, was worthless, and although the same was duly presented for payment on the .... day of ....., 19.., it has never been paid, of which defendant had due notice*], and the plaintiff now brings said check into court for cancellation.

WHEREFORE, etc.

**998. The same, avoiding defense of unexpired credit.**

I. [*Allege sale on credit, as in preceding forms.*]

II. That in order to induce the plaintiff to allow him credit upon such sale, the defendant then falsely and fraudulently represented himself to the plaintiff to be worth a

large sum, to-wit, . . . . . dollars over and above all his just debts and liabilities; whereas in truth he was insolvent; and that the only credit given by the plaintiff to the defendant was solely induced by said false and fraudulent representations, and solely on the faith thereof.

III. That on the . . . . day of . . . . ., 19.., the plaintiff notified the defendant of his election to rescind said credit and demanded payment of said sum, which was refused.

WHEREFORE, etc.

**999. The same, a married woman purchasing for benefit of her separate estate.<sup>1</sup>**

I. That between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., at . . . . . plaintiff furnished to defendant C. . . . D. . . . who was then and still is a married woman and the wife of one E. . . . F. . . ., certain materials used for the building of a house for her upon and for the benefit of her own separate lands and premises, situated in the town of . . . . . in the county of . . . . . [or certain goods and merchandise to be used and which were in fact used by her in and about her separate business hereinafter described].

II. That said defendant, in consideration that the plaintiff would furnish such materials [or goods and merchandise] as aforesaid, then and there promised the plaintiff that she would pay for the same . . . . . dollars [or, as much as they should be reasonably worth].

III. That such materials [or, goods and merchandise] so furnished were reasonably worth the sum of . . . . . dollars, which sum became due to the plaintiff from her on the . . . . day of . . . . ., 19.., but no part thereof has been paid, [except the sum of, etc.]

IV. Plaintiff further shows, upon information and belief, that the premises above mentioned and hereinafter more particularly described, were at and before the . . . . day of . . . . ., 19.., [which was the day of the marriage of defendants] since have been, and now are her sole and separate

<sup>1</sup> In those states where it is provided by statute that a married woman may sue and be sued in matters concerning her separate estate or business as if she were sole it may not be necessary to set forth the facts showing that the

contract or transaction arises out of or concerns such separate property or business; however, it would seem more prudent to do so. See note 5, chapter XIX.



property, and the same are worth about . . . . . dollars, and are bounded and described as follows [*description of premises*] [or, that defendant at the time of such sale and delivery was the owner of a certain separate business, to-wit, a certain millinery business, and that the said goods and merchandise were purchased and used by her in the conduct and management of such separate business].

WHEREFORE, etc.

**1000. The same, for necessaries furnished to wife or children (Eder vs. Grifka, 149 Wis. 606, 136 N. W. 154).**

I. That between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., at . . . . . plaintiff found and provided for one E. . . . F. . . . then the wife [or infant son, or infant daughter] of the defendant, at the request of said E. . . . F. . . ., necessaries for her use to-wit, [*describe same or refer to schedule attached*] of the value of . . . . .dollars.

II. That the said necessaries so furnished by the plaintiff to the said E. . . . F. . . . were suitable to her station in life, and that the same were so found and provided by the plaintiff without request by the defendant, for the reason that the said defendant had on or about the . . . . day of . . . . ., 19.., without just cause, compelled the said E. . . . F. . . . to leave the defendant's home and refused and neglected to provide the necessaries of life for her by reason of which it became necessary that the said articles above named be furnished and provided for the use of the said E. . . . F. . . . without request by the defendant. [*Or otherwise state the facts from which the necessity arose.*]

III. That on the . . . . day of . . . . ., 19.., the plaintiff demanded payment therefor from defendant, but no part thereof has been paid.

WHEREFORE, etc.

**1001. By assignee for price of stock, fixtures and good will of business, to be paid in instalments.**

I. That on the . . . . day of . . . . ., 19.., one E. . . . F. . . . sold and delivered to defendant the stock and fixtures of a certain dry goods store in . . . . . the property of said E. . . . F. . . . and bargained, sold and relinquished to de-

defendant the good will of the business theretofore carried on by said E.... F.... there; for which defendant agreed to pay said E.... F.... the sum of ..... dollars in equal quarterly payments on the .... days of the months of ....., ....., ..... and ..... thereafter.

II. That no part thereof has been paid [except the sum of, etc.]

III. That thereafter, and before this action, said E.... F.... duly assigned to this plaintiff the indebtedness of the defendant therefor, of which defendant had due notice.

WHEREFORE, etc.

### 1002. Against a fraudulent vendee.

I. [*Allege sale, etc., as in Forms 994 or 995.*]

II. That in order to induce plaintiff to make said sale and delivery, and with intent to defraud him of said goods, defendant then falsely and fraudulently represented himself to the plaintiff to be worth a large sum, to-wit, ..... dollars over and above all his just debts and liabilities, whereas in truth he was insolvent; and that induced by said false and fraudulent representations, and solely on the faith thereof, the plaintiff made said sale and delivery.

III. That thereafter, and with such intent, said defendant removed said goods to ..... and is about to sell and dispose of the same.

IV. That defendant is insolvent and, as plaintiff is informed and believes, a judgment against him will be unavailing and worthless if he is suffered to sell and dispose of said goods.

WHEREFORE plaintiff demands judgment against said defendant for the sum of ..... dollars, with interest thereon from the said .... day of ....., 19.., and that defendant and his agents be enjoined from selling, disposing of, removing, or in any wise interfering with said goods or any of them, until such judgment is fully satisfied.

### 1003. Seller against buyer, alleging written contract.

I. That on the .... day of ....., 19.., the plaintiff and defendant entered into a contract or agreement in writing \* in and by which plaintiff agreed to sell and deliver to defendant 500 cords of wood [*or otherwise describe the pro-*

*perty sold*] in consideration whereof the defendant agreed to pay plaintiff upon the delivery of said wood the sum of ..... dollars [*or insert after the \*:* of which a true copy, marked Exhibit A, is annexed hereto and made a part of this complaint.]

II. That on or about the .... day of ....., 19..., plaintiff delivered said 500 cords of wood to defendant at .....

III. That no part of said sum of ..... dollars has been paid to plaintiff [except the sum of ..... dollars, paid the .... day of ....., 19..]

WHEREFORE, etc.

**1004. The same, alleging partial performance and acceptance.**

I. [*As in last preceding form.*]

II. That on or about the .... day of ....., 19..., at ..... plaintiff delivered to defendant 200 cords of said wood [*or otherwise describe the property delivered*] which said defendant then and there received as in full compliance and performance by the plaintiff of his said agreement of sale.

III. That the price of said wood so delivered by plaintiff according to the provisions of said contract is the sum of ..... dollars, [*or, that the reasonable value of said wood so delivered is the sum of ..... dollars*]; that no part of the said sum has been paid [except the sum of ..... dollars on the .... day of ....., 19..]

WHEREFORE, etc.

**1005. Seller against buyer, for goods sold on trial and not returned.**

I. That on or about the .... day of ....., 19..., plaintiff delivered to defendant, at his special request [*describe goods delivered or refer to schedule annexed*] upon the agreement that said defendant would make trial of the same and if unsatisfactory return the same to plaintiff on or before the .... day of ....., 19..., and in case of failure to make such return to pay plaintiff therefor the sum of ..... dollars [*or, the reasonable value thereof*].

II. That defendant did not return the said goods to plaintiff before the date last named, and has not returned

the same, and that no part of said sum of . . . . . dollars has been paid.

WHEREFORE, etc.

**1006. To recover for goods sold under fraudulent representations and to enjoin the disposal of them.**

I. [*Allege sale of the goods as in Form 994.*]

II. That to induce the plaintiff to make said sale, and with intent to defraud him of said goods, the defendant then and there falsely and fraudulently represented himself to the plaintiff to be worth . . . . . dollars, over and above all his just debts and liabilities, when in truth and in fact defendant was at the time insolvent and knew himself so to be, [*or otherwise state the fraudulent representations according to the fact*]; that the plaintiff relied upon and was induced by said fraudulent representations to sell and deliver said goods to the defendant, and so did solely on the faith thereof.

III. That as the plaintiff is informed and believes, defendant is about to sell and dispose of said goods with intent to defraud the plaintiff.

IV. That the defendant is insolvent, and, as the plaintiff is informed and believes, a judgment against him will be worthless, if he is suffered to sell and dispose of said goods, and that no part of said . . . . . dollars has been paid to plaintiff, [*except, etc.*].

WHEREFORE, the plaintiff demands judgment against the defendant, for the sum of . . . . . dollars, with interest thereon from the said . . . . day of . . . . ., 19 . . ., and that the defendant and his agents be enjoined from selling, disposing of, incumbering, removing, or in any wise interfering with said goods or any of them, pending this action.

[*Replevin for the goods is a better remedy.*]

## CHAPTER XXV.

### COMPLAINTS FOR SERVICES.

- |   |  |
|---|--|
| 1007. General form.                                   | 1025. For services and disbursements by advertising agent.                                   |
| 1008. The same, upon an account.                      | 1026. On special contract, completely fulfilled.   |
| 1009. For broker's commissions.                       | 1027. On special contract fulfilled by assignee.   |
| 1010. For freight, against consignor.                 | 1028. By public school teacher for salary (Wisconsin).                                       |
| 1011. For freight, against consignee.                 | 1029. For salary by officer of a corporation.  |
| 1012. For editing a newspaper.                        | 1030. By servant for partial performance of entire contract.                                 |
| 1013. For editing a book.                             | 1031. The same, where plaintiff was wrongfully discharged before expiration of the contract. |
| 1014. For services by architect.                      | 1032. Upon a building contract for services and materials.                                   |
| 1015. For services by physician.                      | 1033. To recover broker's commissions for finding a purchaser for real estate.               |
| 1016. For services by undertaker.                     | 1034. On contract for driving logs.  |
| 1017. For services by auctioneer.                     |  |
| 1018. For tuition services.                           |  |
| 1019. For stabling of horses.                         |  |
| 1020. For work and materials furnished.               |  |
| 1021. For work and materials furnished on an account. |  |
| 1022. For services of minor child.                    |  |
| 1023. For board and lodging.                          |  |
| 1024. For attorney's services and disbursements.      |  |

#### 1007. General form.

I. That between and including the .... day of ....., 19.., and the .... day of ....., 19.., plaintiff rendered services to defendant, at his request, as his household servant [*or state character of the services as in following forms.*]

II. That for said services defendant promised to pay him ..... dollars, which sum became due therefor on the .... day of ....., 19..

III. That no part of the same has been paid, although plaintiff before this action demanded payment thereof.

WHEREFORE, etc.



**1008. The same, upon an account.**

I. That the defendant is indebted to the plaintiff in the sum of ..... dollars on an account for the work, labor and services rendered by plaintiff to defendant and at his request \* at divers times between and including the .... day of ....., 19..., and the ... day of ....., 19..., a true copy of which account is hereto attached and marked Exhibit A.

II. [*If interest is demanded, allege as follows*]: That the said sum became due on the .... day of ....., 19..., and that payment thereof was demanded on said day, but that no part of the same has been paid.

WHEREFORE, etc.

**1009. For broker's commissions.**

I. [*Proceed as in Form 1008 to the \**] as broker, in the purchase [*or sale, or both*] for defendant of stock, bonds and negotiable securities [*or of real estate in .....*] to the amount of ..... dollars.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1010. For freight, against consignor.**

I. [*Proceed as in Form 1008 to the \**] in carrying in their vessel, the ....., from ..... to ..... 100 barrels of flour [*or, sundry goods and merchandise*] at the request of defendant.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1011. For freight, against consignee.**

I. [*Proceed as in Form 1008 to the \**] in carrying in their vessel, the ....., from ..... to ..... 100 barrels of flour [*or sundry goods and merchandise*] which were consigned to defendant, and by the plaintiff delivered to him, and by him accepted.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1012. For editing a newspaper.**

I. [*Proceed as in Form 1008 to the \**] as an editor, in conducting the newspaper of the defendants, known as "The E.... T...." and in writing and preparing articles and paragraphs for the same.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1013. For editing a book.**

I. [*Proceed as in Form 1008 to the \**] in compiling and editing a certain book entitled "The B.... C.... K...." and in preparing the same for the press, and revising and correcting the proofs of the same.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1014. For services by architect.**

I. [*Proceed as in Form 1008 to the \**] as architect, in forming and drawing plans, and making estimates for, and superintending the erection of a dwelling house to be known as No. ...., in ..... street.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1015. For services by physician.**

I. [*Proceed as in Form 1008 to the \**] as a physician and surgeon in and about the treatment of defendant [*or of defendant's son, a member of his family*] for various diseases from which the defendant [*or his said son*] suffered, and for certain medicines and other articles provided by plaintiff in the course of such treatment; all of said services, medicines and other articles having been provided at the request of defendant; the said services, medicines and other articles being more particularly set forth in Exhibit A hereto annexed and made a part hereof.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1016. For services by undertaker.**

I. [*Proceed as in Form 1008 to the \**] as an undertaker in and about the conducting of the preparations for the burial,

and the burial, of the deceased son of defendant, one E. . . . F. . . ., the same being more particularly set forth in Exhibit A hereto annexed and made a part hereof.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1017. For services by auctioneer.**

I. [*Proceed as in Form 1008 to the \**] as an auctioneer in and about the selling by auction of certain household goods and property [*or otherwise describe the property sold*] for defendant, the said services being more particularly set forth in Exhibit A hereto annexed and made a part hereof.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1018. For tuition services.**

I. [*Proceed as in Form 1008 to the \**] in instructing the defendant's children in various useful branches of learning, and for books, papers and other necessary things furnished by this plaintiff in and about said work, at the like request [and or the board, lodging and other necessaries for said children, provided by plaintiff during said time, at the like request.]

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1019. For stabling of horses.**

I. [*Proceed as in Form 1008 to the \**] in the stabling, keeping and feeding of two certain horses, the property of defendant, as more particularly set forth in Exhibit A hereto attached and made a part hereof.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1020. For work and materials furnished.**

I. [*Proceed as in Form 1008 to the \**] in the printing of 1,000 copies of a book called "The B. . . . C. . . . K. . . ." [*or otherwise state the nature of the services*] and that plaintiff then and there furnished the paper and other materials

necessary in the said work upon the like request, and that he delivered the same to defendant.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1021. For work and materials furnished on an account.**

I. [*Proceed as in Form 1008 to the \**] in painting the house of defendant in said town [*or in making a carriage for defendant, or in repairing the machinery in the mill of defendant in said town*] and for materials and other necessary things furnished by this plaintiff in and about said work, on the like request, as more particularly set forth in Exhibit A hereto attached and made a part hereof.

II. [*As in Form 1008.*]

WHEREFORE, etc.

**1022. For services of minor child.**

I. That one E.... F.... rendered services to the defendant, at his request, as a clerk in his store at ..... from ....., 19.., until ....., 19..

II. That such services were reasonably worth the sum of ..... dollars [*or allege price agreed, as in Form 1007.*]

III. That the said E.... F.... is the son of defendant, and was then, and is now under twenty-one years of age.

IV. That no part of the said sum has been paid.

V. That prior to the rendering of said services the plaintiff notified the defendant that he claimed the wages to be earned by said minor for said services.<sup>1</sup>

WHEREFORE, etc.

**1023. For board and lodging.**

I. That between the .... day of ....., 19.., and the .... day of ....., 19.., defendant used and occupied as his lodgings certain rooms in the dwelling house of the plaintiff known as No. ...., ..... street, in the city of ..... by the permission of plaintiff, and was also furnished by the plaintiff with food, attendance and other necessaries at defendant's request, for all of which defendant promised to pay the

<sup>1</sup> In Minnesota if the parent fail to notify the employer that he claims the wages of the minor, payment to the minor is valid. (Minn. Gen. Stats. 1913 sec. 3857.)

plaintiff . . . . . dollars per week [or per month, or if no contract was agreed upon], all of which were reasonably worth the sum of . . . . . dollars per week [or per month].

II. That the amount now due from defendant to plaintiff on account of the said board and lodging so furnished is the sum of . . . . . dollars; that no part thereof has been paid [except etc.] although the plaintiff made due demand for the payment thereof prior to the commencement of this action.

WHEREFORE, etc.

#### 1024. For attorney's services and disbursements.

I. That plaintiff is and was at the times hereinafter stated an attorney and counselor at law, practicing his profession at . . . . . and that defendant is indebted to the plaintiff in the sum of . . . . . dollars, upon an account for the services of the plaintiff, as the attorney of the defendant, rendered upon his retainer, between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., in prosecuting and defending certain suits; and for like services at his request in drawing, copying and engrossing various instruments in writing, and in counseling and advising him, the defendant, and for divers journeys and other attendances in and about the business of said defendant [according to the facts] at his request; and for money paid out and expended by his plaintiff for defendant, at his request, and in and about said suits and business, a true copy of which account is hereto attached and marked Exhibit A. That said sum became due and payable, from the defendant to the plaintiff, on the . . . . day of . . . . ., 19..

II. That on said day [or on the . . . . day of . . . . ., 19.., at . . . . .] payment of same was duly demanded from the defendant by this plaintiff, but no part thereof has been paid [except the sum of, etc.]

WHEREFORE, etc.

#### 1025. For services and disbursements by advertising agent.

I. That between the . . . . day of . . . . ., 19.. and the . . . . day of . . . . ., 19.., at . . . . . this plaintiff rendered services to the defendants, at their request, in causing the defendants' advertisements of their business to be in-



serted in the following named newspapers and periodicals [*names of papers, or annex and refer to a list.*]

II. That this plaintiff, for such insertions, for the use of the defendants, and at their request, paid out [and incurred liability to pay] the sum of ..... dollars, the amount of which payments, together with a reasonable sum for said services the defendants promised to pay this plaintiff.

III. That such services were reasonably worth the sum of ..... dollars, which sum, with the amount of said disbursements, became due on the .... day of ....., 19.., but no part thereof has been paid [except the sum of ..... dollars].

WHEREFORE, etc.

### 1026. On special contract, completely fulfilled.

I. That on the .... day of ....., 19.., the defendants [in consideration of .....] executed in writing under their hands and seals [and delivered to the plaintiff] a contract with the plaintiff, of which the following is a copy: [*copy of contract*].

II. That thereafter, and before the .... day of ....., 19.., plaintiff duly performed all the conditions thereof on his part.

III. That on the .... day of ....., 19.., at ..... plaintiff duly demanded of defendants payment of the sum of ..... dollars [*being the last installment*], in said contract mentioned.

IV. That no part of the same has been paid [except, etc.]

WHEREFORE, etc.

### 1027. On special contract fulfilled by assignee.

I. That on the .... day of ....., 19.., at ....., defendants, in consideration of ..... dollars executed in writing under their hands and seals, and delivered a contract with one M.... N.... of which the following is a copy [or of which a copy is hereto annexed and marked Exhibit A].

II. That thereafter and before the .... day of ....., 19.., said M.... N.... duly assigned the same, and all his rights under it to the plaintiff.

III. That up to the time of the assignment, the assignor had duly performed all the conditions of the contract on his

part, and that since said assignment plaintiff duly performed all the conditions thereof on his part.

[*Continue as in last preceding form from III down.*]

### 1028. By public school teacher for salary (Wisconsin):

I. That at the times hereinafter mentioned defendant was and still is a school district lawfully organized under the laws of this state, and plaintiff was and still is a duly qualified public school teacher holding a teacher's certificate authorizing him to teach in the public schools of the county of . . . . . [or that the plaintiff's certificate is limited to a district less than a county, *setting forth the district*].<sup>2</sup>

II. That on or about the . . . . day of . . . . ., 19.., the district board of defendant district, at a regularly called meeting, made and entered into a contract with the plaintiff whereby plaintiff contracted to teach the public school of said district for the term of . . . . months commencing on the . . . . day of . . . . ., 19.., for the sum of . . . . . dollars per week [month or year] to be paid by said district, a copy of which contract is hereto attached and made a part hereof, marked Exhibit A, and that the said contract, together with a copy of plaintiff's certificate as teacher attached thereto was thereupon filed with the clerk of said district.<sup>3</sup>

III. That thereupon plaintiff commenced to teach the said school, and continued to teach the same for a period of . . . . months, and performed all of the conditions of said contract on his part to be performed.

IV. That no payments have been made by defendant upon said contract [except the sum of, etc.] although the plaintiff has prior to the commencement of this action made due demand upon defendant for such payment, and that there is now due from defendant to plaintiff for said service so rendered the sum of . . . . . dollars, with interest from the . . . . day of . . . . ., 19..

WHEREFORE, etc.

<sup>2</sup> A person not holding a certificate or diploma authorizing him to teach cannot enter into a valid contract with a school district. (Wis. Stats. 1913 sec. 438.)

<sup>3</sup> No act of the district board is valid unless voted at a meeting of the board duly called, or a meeting

where all members are present. (Wis. Stats. 1913 sec. 432.)

This form may be easily adapted for use in other states care being taken to allege all the facts necessary to make the contract a valid one under the statutory requirements of the particular state.

**1029. For salary by officer of a corporation.**

I. That the defendant was at the times hereinafter stated and still is a private corporation organized and existing under the laws of this state.

II. That on or about the .... day of ....., 19.., plaintiff was duly elected to the office of secretary [*or president, as the fact may be*] of said defendant corporation, and from the said last named date until the .... day of ....., 19.., the plaintiff performed all the duties pertaining to the said office.

III. That the salary of the said office prior to said time had been and was duly fixed by the said defendant at the sum of ..... dollars per year and remained so fixed during all of the time defendant held said office.

IV. That no part of the said salary has been paid [except, etc.] and that by reason of the premises defendant is justly indebted to the plaintiff in the sum of ..... dollars, payment of which sum has been duly demanded by plaintiff before the commencement of this action.

WHEREFORE, etc.

**1030. By servant for partial performance of entire contract.<sup>4</sup>**

I. That on or about the .... day of ....., 19.., defendant employed plaintiff as a farm laborer [*or otherwise describe the nature of the employment*] for the full term of ten months commencing March 1st, 19.., and agreed to pay plaintiff for his services during said entire period the sum of ..... dollars per month, payable at the end of each month.

II. That thereupon plaintiff entered upon his said employment, and continued therein until the .... day of ....., 19.., when by mutual consent the plaintiff left the service of said defendant.

III. That no part of the said wages so agreed to be paid by defendant has been paid [except, etc.], although plaintiff has demanded the same before the commencement of the

<sup>4</sup> If an entire contract be terminated by consent of the parties after part performance only, plaintiff can recover at the contract rate for that

part of the contract which he has completed. *Hildebrand v. American Fine Art Company*, 109 Wis. 171; 85 N. W. 268.

action, and that the sum of ..... dollars, with interest from ....., 19.., is now due plaintiff on said contract.

WHEREFORE, etc.

**1031. The same, where plaintiff was wrongfully discharged before expiration of the contract.<sup>5</sup>**

I. [*As in preceding form.*]

II. That thereupon plaintiff entered upon said employment and continued therein until the .... day of ....., 19.., at which time defendant without just or reasonable cause discharged plaintiff and refused to permit him to continue in said employment although the plaintiff was ready and willing to do so.

III. That thereafter and from time to time plaintiff made due and diligent effort to obtain other employment during the said contract period, but was unable to secure such employment, whereby plaintiff has lost the wages which he otherwise would have received from defendant during said period [*or if plaintiff secured employment during any part of said period, state for what term and how much was received.*]

IV. That defendant has neglected and refused to pay to the plaintiff the wages earned by plaintiff during the time he was actually employed by defendant [except, etc.] and that defendant has also neglected and refused to pay the plaintiff for any part of the damages caused to plaintiff by reason of said unlawful discharge, although plaintiff prior to the commencement of this action demanded payment of the same from defendant; and that there is now due the plaintiff from the defendant by reason of the premises the sum of ..... dollars, with interest from ....., 19..

WHEREFORE, etc.

<sup>5</sup> If a party to an entire contract is wrongfully prevented from rendering full performance he can recover on the contract for services rendered prior to such prevention, together with damages for not being allowed to complete the contract, not exceeding the full amount he could have

earned by full performance, which amount *prima facie* is the full wages for the balance of the contract period less any sum which might reasonably have been earned during such time. *Hildebrand vs. Am. Fine Art Co., Supra.*

**1032. Upon a building contract for services and materials.<sup>6</sup>**

I. That on or about the . . . . day of . . . . ., 19. . . , plaintiff and defendant entered into a contract in writing by which the plaintiff agreed to erect and furnish materials for the erection of a certain building for defendant to be used as a dwelling house, for the sum of . . . . . dollars, a copy of which contract is attached to this complaint and made a part hereof and marked Exhibit A.

II. That thereafter plaintiff proceeded to construct the said building, and furnished materials therefor, and prior to the . . . . day of . . . . ., 19. . . , duly performed all the conditions of said contract on his part to be performed, and completed said building, and the same was duly accepted by defendant.

III. That defendant has paid, on account of the said contract, at various times, the sum of . . . . . dollars, leaving a balance of . . . . . dollars now due and owing to plaintiff, and that no part thereof has been paid, although the same has been demanded by plaintiff prior to the commencement of this action.

WHEREFORE, etc.

[*If extra work was performed insert an allegation, following II, setting forth the fact, e. g.* III. That prior to the completion of said work and at the request of said defendant the said contract was modified by the parties and the plaintiff in pursuance of such agreement of modification, (*state the extra work done and materials furnished*) and defendant promised to pay therefor the reasonable value thereof (*or the sum of . . . . . dollars*) in addition to the sum stated in the original agreement aforesaid.]

**1033. To recover broker's commissions for finding a purchaser for real estate.**

I. That on or about the . . . . day of . . . . ., 19. . . , the defendant employed the plaintiff as a broker to procure a purchaser for certain real estate owned by the defendant de-

<sup>6</sup> As nearly all actions upon building contracts are brought in the form of foreclosure of mechanic's lien, no further forms are inserted here, but

additional forms will be found in the chapter devoted to complaints on mechanic's liens.



scribed as follows [*insert description*] at a price of not less than . . . . . dollars, and agreed to pay the plaintiff for his services in procuring such purchaser, [*state the terms, e. g. five per cent of the sale price thereof or otherwise according to the contract.*]

II. That in pursuance of said contract and on or about the . . . . day of . . . . ., 19.. the plaintiff found and procured a purchaser to-wit, one G. . . . H. . . . ready, willing and able to purchase the said property at said price, and so informed said defendant, [*or and presented him to the defendant*].

III. [*If the defendant conveyed the premises to the person so procured*]: That the defendant thereupon sold and conveyed said premises to the said G. . . . H. . . . for the sum of . . . . . dollars, but no part of plaintiff's said commission has been paid.

WHEREFORE, etc.

#### 1034. On contract for driving logs.

I. That on . . . . ., 19.., plaintiff contracted with defendant to drive certain logs of defendant from . . . . . into the . . . . Boom, in . . . . ., state of . . . . ., and defendant agreed to pay plaintiff therefor at the rate of . . . . . dollars per thousand feet, when the logs were in the boom.

II. That plaintiff has fully performed all the conditions of said contract on his part, that he drove about . . . . feet of said logs into said boom in the month of . . . . ., and about . . . . feet thereof in the month of . . . . ., making in all . . . . feet, being all the logs so agreed to be driven by plaintiff.

III. That defendant has not paid to plaintiff the amount agreed upon for said driving, nor any part thereof.

WHEREFORE, etc.

## CHAPTER XXVI.

### COMPLAINTS FOR USE AND OCCUPATION OF REAL PROPERTY.

1035. For reasonable value of use. | 1037. For rooms and lodgings.  
1036. For agreed rent. |

#### 1035. For reasonable value of use.

I. That plaintiff is now and was at the times hereinafter named, the owner in fee of that certain dwelling house and premises known as No. . . . ., . . . . . street, in the city of . . . . . [or otherwise describe the premises] and that defendant occupied the same by permission of the plaintiff, as his tenant, from the . . . . . day of . . . . ., 19.., until the . . . . . day of . . . . ., 19...

II. That the use of the said premises for that period was reasonably worth . . . . . dollars.

III. That no part of the same has been paid [except the sum of, etc.]

WHEREFORE, etc.

#### 1036. For agreed rent.

I. [Allege ownership as in preceding form, and then proceed]: That on the . . . . . day of . . . . ., 19.., at . . . . . defendant hired from plaintiff the said premises for the term of . . . . . at the agreed rental of . . . . . dollars per month, payable on the first day of every month.

II. That defendant occupied the said premises from the . . . . . day of . . . . ., 19.., to the . . . . . day of . . . . ., 19.. [Or, where defendant had abandoned possession: That defendant took possession of and occupied the said premises under said agreement].

III. That the sum of . . . . . dollars, being the part of said rent due on the first day of . . . . ., 19.., is still unpaid.

WHEREFORE, etc.

**1037. For rooms and lodgings.**

—[*Proceed as in either of last preceding forms substituting as a description of the property rented*]: rooms in and part of the house of the plaintiff [*and if furnished, add: together with furniture, linen, and other household necessaries of the plaintiff, which were therein*], by the plaintiff's permission as his tenant, from, etc.

## CHAPTER XXVII.

### COMPLAINTS FOR HIRE OF PERSONAL PROPERTY.

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|--|--|--|
| 1038. For the hire of personal property. |  | damages for failure to return.                       |
| 1039. For hire of property with          |  | 1040. For hire of property with damages for ill use. |

#### 1038. For the hire of personal property.

I. That between the .... day of ....., 19.., and the .... day of ....., 19.., defendant hired from plaintiff a certain horse and carriage, the property of the plaintiff [*or otherwise describe the property hired*] for which he agreed to pay plaintiff the sum of ..... dollars, on the .... day of ....., 19.., [*or the reasonable value of the use thereof, which was and is the sum of ..... dollars*].

II. That no part of the same has been paid [except the sum of, etc.]

WHEREFORE, etc.

#### 1039. For hire of property with damages for failure to return.

*First.* For a first cause of action:

I. That on the .... day of ....., 19.., at ..... defendant hired from plaintiff one pianoforte [*or otherwise describe the property*] the property of the plaintiff, for the space of six months then next ensuing, to be returned to this plaintiff at the expiration of said time in good condition, reasonable wear excepted, for the use of which he promised to pay this plaintiff a reasonable sum [*or if a specified sum was agreed to be paid insert amount thereof*].

II. That ..... dollars was a reasonable sum for the hire of the same; which sum, on the .... day of ....., 19.., became due from defendant to plaintiff.

III. That no part of the same has been paid [except the sum of ..... dollars].

*Second.* And for a second cause of action:

I. The plaintiff repeats and makes part of this cause of action all the allegations contained in the first paragraph of the first cause of action above set forth and further alleges:

II. That the value of the property so hired by defendant, as above alleged, was ..... dollars, and that defendant, not regarding his said undertaking to return the same to this plaintiff, has not returned the same, although he was, on the ... day of ....., 19.., at ..... requested by the plaintiff so to do, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

#### 1040. For hire of property with damages for ill use.

*First.* For a first cause of action:

I. That on the ... day of ....., 19.., at ..... defendant hired from the plaintiff household furniture, plate, pictures, and books, the property of plaintiff, to-wit [*describe the articles, or refer to a schedule annexed*], for the space of ... years then next ensuing, to be returned by him to the plaintiff at the expiration of said time in good condition, reasonable wear and tear thereof excepted.

II. That he promised to pay plaintiff for the use thereof ..... dollars [in quarterly payments, on the ... days of ....., ....., ..... and ..... thereafter].

III. That no part thereof has been paid [except the sum of ..... dollars, etc.]

*Second.* For a second cause of action:

I. This plaintiff further states that the value of the property so hired by defendant, as above alleged, was ..... dollars.

II. That defendant, not regarding the said undertaking to return the same in good condition, took so little care thereof that through his negligence, carelessness and ill-use the same became broken, defaced and damaged beyond the reasonable wear thereof, and in that condition were returned to plaintiff, to his damage ..... dollars.

WHEREFORE, etc.



## CHAPTER XXVIII.

### COMPLAINTS UPON ACCOUNTS AND AWARDS.

- |  |  |
|--|--|
| 1041. Common form upon open account.         | under common law agreement of arbitration.   |
| 1042. Upon account stated.                   | 1045. The same, short form, submission oral. |
| 1043. On an account stated between partners. | 1046. Upon award of an umpire.               |
| 1044. Upon award of arbitrators,             | 1047. Allegation of enlargement of time.     |

#### 1041. Common form upon open account.<sup>1</sup>

I. That defendant is indebted to plaintiff in the sum of ..... dollars, upon an account for [*here state the consideration, e. g. goods sold and money lent by plaintiff to defendant*] between the .... day of ....., 19.., and the .... day of ....., 19.., a true copy of which account is attached to and made part of this complaint and marked Exhibit A.

II. That the sum of ..... dollars became payable thereon on the .... day of ....., 19.., but no part thereof has been paid.

WHEREFORE, etc.

<sup>1</sup>In some states a copy of the account must be attached to and filed with the pleadings: Ark. Dig. of Stats. 1904 sec. 6128; Iowa Ann. Code 1897 sec. 3623, 3624; Kans. Gen. Stats. 1909 sec. 5713; Mo. R. S. 1909 sec. 1832; Neb. R. S. 1913 sec. 7692, 7697; Okla. Comp. Laws 1909 sec. 5658; Wyo. Comp. Stats. 1910 sec. 4405.

In other states it is not necessary to set forth the items of account, but if it be not set forth in the pleading a verified copy may be demanded of the adverse party, which copy must be given within a certain number of days. Wis. Stats. 1913 sec. 2672; Ariz. R. S. 1913 sec. 421; Cal. C. C. P. 1906 sec. 454; Colo. Code Ann.

1911 sec. 69; Idaho Rev. Codes 1908 sec. 4209; Mont. Rev. Codes 1907 sec. 6569; Minn. Gen. Stats. 1913 sec. 7777; N. Dak. Rev. Codes 1905 sec. 6868; S. Dak. C. C. P. 1908 sec. 135; Utah Comp. Laws 1907 sec. 2988; Wash. Rem. & Bal. Code 1910 sec. 284.

In Oregon, (Oregon Laws 1910 sec. 84), a party may set forth items of account in the pleading or file a copy with the pleading; if he do neither he shall, upon demand in writing, within five days deliver a copy of the account to the adverse party.

It would seem best, therefore, to attach in each case a copy to the original complaint.

**1042. Upon account stated.**

I. That on the .... day of ....., 19.., at ..... an account was stated between plaintiff and defendant, upon which a balance of ..... dollars was found to be due from said defendant to this plaintiff [which sum defendant then agreed to pay].

II. That no part thereof has been paid [except, etc.]  
WHEREFORE, etc.

**1043. On an account stated between partners.**

I. That on the .... day of ....., 19.., the plaintiff formed a partnership for the purpose of [*state business*] at ..... [for a term of .... years] [*or set forth copy of agreement*].

II. That the capital of said partnership was paid in and the said firm commenced business on said date and conducted the same until the .... day of ....., 19.., when a full accounting and settlement of the said partnership affairs was had between plaintiff and defendant.

III. That upon such accounting and settlement it was ascertained and determined that the defendant was indebted to the plaintiff in the sum of ..... dollars, and the said business was by mutual consent discontinued and said partnership dissolved.

IV. That the debts of said partnership have been paid in full, and that on the .... day of ....., 19.., the plaintiff demanded of defendant payment of said sum of ..... dollars, but the defendant refused and still refuses to pay the same.

WHEREFORE, etc.

**1044. Upon award of arbitrators, under common law agreement of arbitration.<sup>2</sup>**

I. That on the .... day of ....., 19.., controversies existed between plaintiff and defendant concerning certain demands by the plaintiff against said defendant for ser-

<sup>2</sup>This and the three following forms are used in case of an action brought upon a common law arbitration, and have no reference to the proceedings which the statute authorizes to be

taken before the entry of judgment upon a statutory arbitration; appropriate forms for which proceedings are found in Chapter III, *supra*. See note to that chapter.

vices rendered by this plaintiff to said defendant, at his request, in drawing plans and specifications of a dwelling house for defendant, which demands defendant disputed and refused to pay [*or state other claims, according to the circumstances of the case*].

II. That for the purpose of putting an end to said controversies and differences, they then and there [by an agreement in writing] submitted themselves and said controversies to the award, arbitrament and final determination of one E.... F.... an arbitrator [*or E.... F.... and G.... H.... two arbitrators*] to arbitrate and determine concerning said disputes and controversies, and mutually promised each other to abide by and perform his award [*or they then and there, by an agreement in writing, a copy of which is hereto annexed and marked Exhibit A agreed to submit the same to the award of E.... F....*]

III. That thereafter the said arbitrator [*or the said arbitrators*] having undertaken the arbitration, heard plaintiff and defendant, and on the ... day of ....., 19.., at ..... duly made and published [*and where such notice is required by the submission, add:* and notified the said parties of] his [*or their*] award [*in writing*] of and concerning the matter so referred [*which award bears date the ... day of ....., 19..*]; and thereby he awarded and declared that after due appearance before him on behalf of this plaintiff and said defendant he found that said defendant was justly indebted to this plaintiff in the sum of ..... dollars for the services aforesaid [*or otherwise state substance of the award*].

[*Or, where the award is in writing*]: That thereafter said arbitrator [*or arbitrators*] having undertaken the arbitration, duly made and published his [*or their*] award in writing, of which the following is a copy [*or a copy of which is hereto annexed and marked Exhibit B*].

IV. That plaintiff duly performed all the conditions thereof on his part and [afterwards, and on or about the ... day of ....., 19.., at .....] gave notice of said award to the defendant, and demanded of him payment of said sum of ..... dollars.

V. That defendant then and ever since has refused to pay the same and there is now due from defendant to plaintiff

thereon the sum of ..... dollars, with interest from, etc.  
WHEREFORE, etc.

**1045. The same, short form, submission oral.**

I. That on ....., 19.., plaintiff and defendant, by mutual agreement, appointed E.... F.... and G.... H... as arbitrators, to hear and determine, and make an award, on certain matters of controversy between plaintiff and defendant, and mutually agreed to abide by and perform the award of said arbitrators.

II. That on ....., 19.., said arbitrators having heard and determined said matters, duly made their award, adjudging and awarding that defendant should pay plaintiff ..... dollars in full satisfaction and discharge of all said matters in controversy.

III. That on ....., 19.., plaintiff demanded payment of said award but no part thereof has been paid.

WHEREFORE, etc.

**1046. Upon award of an umpire.**

[*Substitute for the first part of paragraph III in Form 1044*]: That said E.... F.... and G.... H.... [arbitrators], before they proceeded upon the said arbitration, on the .... day of ....., 19.., by writing, under their hands, appointed one J.... K.... to be umpire in the matter so submitted; and the said arbitrators, after hearing the plaintiff and defendant, and not being agreed concerning the matters submitted, the said J.... K.... afterwards undertook said arbitration and heard plaintiff and defendant, and on the .... day of ....., 19.. [*allege the award as in Form 1044.*]

**1047. Allegation of enlargement of time.**

That on the .... day of ....., 19.. [*or thereafter, and within the time limited for making the award*] plaintiff and defendant, by agreement [*in writing, of which a copy is hereto annexed and marked Exhibit C*] extended the time for making the award until the .... day of ....., 19..

## CHAPTER XXIX.

### COMPLAINTS ON VARIOUS EXPRESS PROMISES.

- |  |  |
|--|--|
| 1048. Upon an agreement to pay money in consideration of the withdrawal of a pending action. | 1053. On express promise in consideration of a precedent debt.             |
| 1049. The same, for withdrawal of opposition to probate of a will.                           | 1054. On a new promise to pay a debt barred by statute of limitations.     |
| 1050. Upon a promise to a third person to pay money to the plaintiff.                        | 1055. On a promise to pay share of net profits for assignment of a patent. |
| 1051. Upon a promise to pay for the surrender of a lease.                                    | 1056. For breach of contract to procure insurance.                         |
| 1052. To recover the consideration for a conveyance.   | 1057. On a special promise to pay the debt of another.                     |
|  | 1058. For revoking a submission to arbitration.                            |

#### 1048. Upon an agreement to pay money in consideration of the withdrawal of a pending action.

I. That on the . . . . day of . . . . ., 19.., an action was pending between the parties to this action, brought by the plaintiff to recover from defendant the sum of . . . . . dollars, which defendant owed plaintiff, but which he disputed.

II. That in consideration that the plaintiff would discontinue his said action and would accept . . . . . dollars in satisfaction of said disputed claim, defendant promised to pay plaintiff the sum of . . . . . dollars [on the . . . . day of . . . . ., 19..]

III. That plaintiff accordingly did discontinue said action. [Or: That plaintiff has duly performed all the conditions of said agreement on his part].

IV. That no part of said sum has been paid [except the sum of, etc.]

WHEREFORE, etc.

#### 1049. The same, for withdrawal of opposition to probate of a will.

I. That heretofore one M. . . . N. . . . died, leaving him



surviving A.... B...., this plaintiff, one of his heirs at law [or next of kin.]

II. That after his death the defendant [and others] produced and propounded for probate in the court of the surrogate of ..... an instrument purporting to be the will of said M.... N...., whereby [a part of] the estate to which the plaintiff would have succeeded if said M.... N.... had died intestate was devised and bequeathed to the defendant.

III. That there were doubts as to the validity of said devises and bequests [or of the execution of said will, or both] and that the plaintiff threatened to oppose its probate on that account.

IV. That in consideration that the plaintiff would withhold all opposition to the proving of the will, the defendant, on the .... day of ....., 19.., promised that he would pay to the plaintiff the sum of ..... dollars [on, etc.].

V. That plaintiff accordingly withdrew all opposition to the probate of the will, and it was thereupon duly proved before said surrogate. [Or, That plaintiff has duly performed all the conditions thereof on his part].

VI. That no part of said sum has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1050. Upon a promise to a third person to pay money to the plaintiff.**

I. That on the .... day of ....., 19.., one M.... N.... was and ever since has been indebted to the plaintiffs in the sum of ..... dollars.

II. That on that day the said M.... N.... being the holder of a bill of exchange [*describing it*] indorsed and delivered the same to the defendants, in consideration of which the defendants then and there promised M.... N.... that they would endeavor to collect the same, and that when collected they would apply the proceeds in payment of said indebtedness of said M.... N.... to the plaintiffs.

III. That thereafter and on the .... day of ....., 19.., the defendants collected and received the amount thereof.

IV. That no part of the same has been paid to the plaintiff.

WHEREFORE, etc.

**1051. Upon a promise to pay for the surrender of a lease.**

I. That at the time hereafter mentioned the plaintiff had a lease of a house and lot in the town of ..... for a term commencing on the .... day of ....., 19.., and ending on the .... day of ....., 19.., under which he was entitled to the possession of said house and lot.

II. That on the .... day of ....., 19.., the defendant being the owner of [or having purchased] the reversion of said premises, subject to the unexpired term of the lease, promised the plaintiff that in consideration that he, the plaintiff, would surrender to the defendant the unexpired term and the possession, he would pay the plaintiff the sum of ..... dollars [on, etc.]

III. That the plaintiff thereupon accordingly surrendered the unexpired term and the possession to the defendant. [Or: That the plaintiff duly performed all the conditions thereof on his part].

IV. That no part of said sum has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1052. To recover the consideration for a conveyance.**

I. That on the .... day of ....., 19.., at ..... this plaintiff sold and conveyed to defendant, at his request, certain premises in the town of ..... known and described as follows [*designate the premises*].

II. That defendant agreed to pay plaintiff therefor the sum of ..... dollars, on the .... day of ....., 19..

III. That no part of the same has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1053. On express promise in consideration of a precedent debt.**

I. That on the .... day of ....., 19.., at ..... the defendant being then indebted to the plaintiff in the sum of ..... dollars for [*here state concisely the consideration, e. g.*

goods heretofore sold and delivered by the plaintiff to the defendant] in consideration thereof promised the plaintiff that he would pay him said sum on the . . . . . day of . . . . , 19. . . [or on demand, or otherwise, as the case may be].

II. That no part thereof has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1054. On a new promise to pay a debt barred by statute of limitations.<sup>1</sup>**

[Plead the original cause of action as in other cases, and continue]:

II. That thereafter, on the . . . . day of . . . . . , 19. . . , in consideration of the foregoing facts, the defendant promised to the plaintiff that he would pay such indebtedness.

III. That no part of the same has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1055. On a promise to pay share of net profits for assignment of a patent.<sup>2</sup>**

I. That heretofore there were issued in due form of law unto this plaintiff by the United States of America . . . . . letters patent, as follows: [specify the patents if more than one by numbers and date of issue] and that the said letters patent are the same letters patent as are named in the contract duly made between the parties hereto a copy of which is hereunto annexed and made part hereof.

II. That thereafter and by virtue of said contract this plaintiff on or about the . . . . day of . . . . . , 19. . . , duly assigned and set over unto the defendant at its request the letters patent aforesaid.

III. That thereafter and ever since the last named date the defendant, as the plaintiff is informed and believes, has manufactured and sold under said letters patent and contract upwards of . . . . . of the commodities thereby covered

<sup>1</sup>In those states where, as in Wisconsin, the defense of the statute of limitations is taken advantage of upon demurrer, it is necessary to allege in the complaint the new promise substantially as in this form,

if it appears on the face of the complaint that the original cause of action expired by the statute of limitations.

<sup>2</sup>Precedent in *Dalzell v. F. W. C. Co.*, 138 N. Y. 285; 33 N. E. 1071.

and referred to, and that after all the deductions authorized by said contract from the proceeds of such sale there remains received by the defendant as net profits the sum of at least . . . . . dollars.

IV. That plaintiff has performed all the conditions and agreements by him to be kept and performed under said contract on his part, and prior to the commencement of this action demanded his said half of the said net profits from the defendant, but the defendant refused to pay over the same or account therefor, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

**1056. For breach of contract to procure insurance.**

I. That at the times hereinafter mentioned the defendant was engaged in business as a fire insurance agent at . . . . . representing a number of insurance companies.

II. That on and prior to the . . . . . day of . . . . ., 19.. the plaintiff owned a certain dwelling house *{or other building, describing same and the real estate on which it stood}*.

III. That on said . . . . . day of . . . . ., 19.. the plaintiff and defendant entered into an agreement whereby in consideration of plaintiff's promise to pay a premium of . . . . . dollars, the defendant agreed to cause plaintiff's said building to be insured in the sum of . . . . . dollars against destruction by fire in one of the said insurance companies represented by him and to deliver the policy or policies representing said insurance to the plaintiff.

IV. That plaintiff has duly performed all the conditions of said agreement on his part.

V. That defendant did not cause said building to be so insured in the sum of . . . . . dollars, or in any sum whatever.

VI. That on the . . . . . day of . . . . ., 19.., and while plaintiff was the owner of said building, it was totally destroyed by fire, and it was then of the value of . . . . . dollars.

VII. That by reason of the premises plaintiff has been damaged in the sum of . . . . . dollars.

WHEREFORE, etc.

**1057. On a special promise to pay the debt of another.**

I. That on and prior to the . . . . . day of . . . . ., 19.. E. . . . F. . . . and G. . . . H. . . . were partners, doing a gen-

eral merchandise business at . . . . ., and that on said last named date the defendant C. . . . D. . . . by agreement in writing purchased all the property of every kind then belonging to said E. . . . F. . . . and G. . . . H. . . ., as partners aforesaid, and agreed to pay therefor the sum of . . . . . dollars, and further agreed as part of the consideration for said purchase to pay all the partnership liabilities and debts of the said E. . . . F. . . . and G. . . . H. . . . to the persons to whom said debts and liabilities were owing and at the respective times when the same should mature.

II. That thereupon the said partnership delivered to said defendant all of the partnership property aforesaid and said C. . . . D. . . . took possession thereof, and by reason of the premises became liable and obligated to pay said debts and liabilities as they became due.

III. That at the time of said sale the said partnership was indebted to the plaintiff in the sum of . . . . . dollars upon an account for goods theretofore sold and delivered by plaintiff to said partnership, no part of which sum has been paid and which is now past due.

WHEREFORE, etc.

### 1058. For revoking a submission to arbitration.

I. That on or about the . . . . day of . . . . ., 19. . ., by a certain agreement in writing, duly executed and acknowledged, then made by and between the defendant and the plaintiff, it was, among other things, agreed by and between the said plaintiff and the defendant that they would submit the matters in controversy then existing between the said plaintiff and the said defendant respecting certain money claimed by the said plaintiff to be due from him, the said defendant [or, respecting certain unsettled accounts and matters between them, etc., *as the fact may be*], to the final award and determination of A. . . . B. . . ., C. . . . D. . . . and E. . . . F. . . ., arbitrators chosen by the said parties (or any two of them), so as the said arbitrators should make their award in writing, ready to be delivered to the said parties, or such of them as should require the same on or before the . . . . day of . . . . ., 19. . .;

II. That thereupon afterwards, to-wit: on the . . . . day of . . . . ., 19. . ., the said arbitrators proceeded upon the said



submission so as aforesaid made, and the said parties then appeared before the said arbitrators, and proceeded to the trial and investigation of the matters so submitted to the said arbitrators as aforesaid;

III. That afterwards, to-wit: on the . . . . day of . . . . ., 19. ., after the said investigation was commenced, and before the cause was finally submitted to the said arbitrators, the said defendant revoked the said submission by an instrument of revocation in writing duly signed by him, and delivered to the said arbitrators, whereby the powers of the said arbitrators in the premises ceased and were annulled, and whereby also the said plaintiff sustained great damage, to-wit: . . . . . dollars for his costs, expenses and damages in employing and paying counsel, subpoenaing witnesses, and in otherwise preparing for the trial of the said cause before the said arbitrators.

WHEREFORE, etc.

## CHAPTER XXX.

### COMPLAINTS ON BONDS.

- |  |   |
|--|---|
| 1059. On bond for payment of money only.         | a clerk, or cashier.  |
| 1060. The same, setting forth copy.              | 1067. On a bond for faithful accounting of a subscription agent.            |
| 1061. By surviving obligee in a joint bond.      | 1068. On arbitration bond for refusal to comply with award.                 |
| 1062. On a negotiable corporate bond.            | 1069. Against surety company on bond for fidelity of an employee.           |
| 1063. On a coupon.                               | 1070. Complaint on contractor's bond indemnifying against mechanics' liens. |
| 1064. On a bond other than for payment of money. |   |
| 1065. The same, pleading legal effect.           |   |
| 1066. On a bond for the fidelity of              |   |

#### 1059. On bond for payment of money only.

I. That on the .... day of ....., 19.., at ..... the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff the sum of [*state, not the penalty but the amount named in the condition*] on the .... day of ....., 19.., with interest from, etc. [*or as follows: ..... dollars thereof on the .... day of ....., 19.., and ..... dollars thereof on the .... day of ....., 19.., with interest on each of said sums from, etc., or otherwise according to the condition*].

II. That no part of the same has been paid [except the sum of, etc.]

WHEREFORE the plaintiff demands judgment against the defendant for the sum of [*state the amount due*].

#### 1060. The same, setting forth copy.

I. That on the .... day of ....., 19.., the defendant made and delivered to the plaintiff his certain bond, a copy of which is hereunto attached, marked Exhibit A and made a part of this complaint. [*Continue as in last preceding Form*].

WHEREFORE, etc.

**1061. By surviving obligee in a joint bond.**

I. That on the .... day of ....., 19.., at ..... the defendant covenanted with the plaintiff and one C.... D... under his hand and seal, to pay to the plaintiff and said C.... D.... jointly [*proceed as in other Forms*].

II. That on the .... day of ....., at ....., said C.... D.... died.

III. [*Allege breach as in other cases.*]

WHEREFORE, etc.

**1062. On a negotiable corporate bond.**

I. That the defendant is now and was at the times herein-after mentioned a corporation organized and existing under the laws of the state of .....

II. That on the .... day of ....., 19.., said defendant by its proper agents and officers executed its negotiable commercial bond, bearing date on said day, in the sum of ..... dollars, payable to bearer [*or to A.... B.... or order, or to A.... B.... or his assigns*] .... years after date, at the ..... bank, in the city of ....., a copy of which bond is hereto attached and made part of this complaint and marked Exhibit A.

III. That thereafter and before the maturity of said bond plaintiff purchased the same for a valuable consideration, and is still the owner thereof.

IV. That no part of said bond has been paid, but there is due thereon from defendant to plaintiff the sum of ..... dollars, with interest thereon from the .... day of ....., 19..

WHEREFORE, etc.

**1063. On a coupon.**

I. That on the .... day of ....., 19.., at the city of ..... said defendant made, issued and delivered its certain coupon, numbered .... whereby it promised to pay to bearer the sum of ..... dollars on the .... day of ....., 19..

II. That plaintiff is now the lawful owner and holder thereof, and that no part thereof has been paid.

WHEREFORE, etc.

**1064. On a bond other than for payment of money.**

I. That the defendant, on the .... day of ....., 19..., made and delivered his bond or writing obligatory sealed with his seal, of which the following is a copy: [*set forth copy of bond, including condition*] [*or of which a copy is attached hereto, made part of this complaint and marked Exhibit A.*]

II. [*Set forth a breach and allege damage.*]

WHEREFORE, etc.

**1065. The same, pleading legal effect.**

I. That on the .... day of ....., 19..., at ....., the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff the sum of [*state the penalty*].

II. That said obligation was upon the express condition thereunder written that if, etc. [*set forth the substance or words of the condition*] the said obligation was to be void, otherwise to remain in full force.

III. [*Allege breaches, as in other cases.*]

WHEREFORE, etc.

**1066. On a bond for the fidelity of a clerk, or cashier.**

I. That on the .... day of ....., 19..., at ....., the plaintiffs being then about to employ one M.... N.... as a clerk [*or to appoint one M.... N.... as their cashier*] the defendants under their hands and seals, covenanted with the plaintiffs that if the said M.... N.... should not faithfully perform his duties as such clerk [*or cashier*] to the plaintiffs, or should fail to account to the plaintiffs for all moneys, evidences of debt, or other property received by him for the use of the plaintiffs, the defendants would pay to the plaintiffs whatever loss they might sustain by reason thereof, not exceeding ..... dollars [*or otherwise, according to the condition; or say: That on the .... day of ....., 19..., at ....., the plaintiffs being then about to employ one M.... N.... as a clerk (or to appoint one M.... N.... as their cashier) the defendants executed to the plaintiffs a bond, a copy of which is annexed and marked Exhibit A.*]

II. That in consideration of the making and delivery of said bond the plaintiff thereupon employed the said M.... N.... as such clerk [*or appointed said M.... N.... as*

such cashier] and he thereupon entered upon the performance of his duties as such clerk [or cashier].

III. That between the .... day of ....., 19.., and the .... day of ....., 19.., the said M.... N.... as such clerk [or cashier] received money and other property amounting to the value of ..... dollars, to the use of the plaintiffs, which he has converted to his own use and for which he has not accounted to them, although an account thereof has been duly demanded. [*Or otherwise set forth breach according to the fact.*]

WHEREFORE, etc.

**1067. On a bond for faithful accounting of a subscription agent.**

I. That on the .... day of ....., 19.., at ..... it was mutually agreed between the plaintiff and one E.... F.... that the said E.... F.... should canvass the cities of ..... for subscribers to certain books then in course of publication in numbers by the plaintiff, and had for sale by him to subscribers [or for subscribers to the ....., a magazine or periodical then published by this plaintiff]; that the said E.... F.... should collect for account of the plaintiff the moneys which should grow due upon the subscriptions procured by him; that the plaintiff should pay to said E.... F...., ..... dollars upon each order or subscription obtained by him the same to be payable whenever .... numbers of the work subscribed for should have been paid for by the subscriber thereof; and that the said E.... F.... should faithfully account to this plaintiff for all books and parts of books intrusted to him and should faithfully pay over to the plaintiff all the money that he should from time to time collect under the authority given him by the said agreement, exceeding his commission of ..... dollars for each order or subscription.

II. That then and there [or on the .... day of ....., 19.., at .....] the defendant made and delivered to the plaintiff his bond under his hand and seal, and thereby bound himself in the penal sum of ..... dollars to this plaintiff, the condition of which bond was that if the said E.... F.... should faithfully render up or account for, to this plaintiff, all books and parts of books and other publications and



specimens, and all sums of money, evidences of debt and things in action which should be intrusted to him by or on behalf of this plaintiff, or by or on behalf of others to the use of this plaintiff, in the course of the employment of said E.... F.... as a canvasser as aforesaid, up to and not exceeding the amount of ..... dollars at any one time, then said bond should be void, otherwise it should be of full force and effect.

III. That the plaintiff did thereafter intrust and deliver to said E.... F.... in the course of his employment under the agreement aforesaid certain books and parts of books of the value of ..... dollars, for which he has failed to account to the plaintiff [or that thereafter said E.... F.... did collect and receive divers sums of money in the course of his employment under the agreement aforesaid, exceeding his commissions, to-wit, the amount of ..... dollars, which sums he failed to render up, account for or pay over to the plaintiff.]

IV. That on the .... day of ....., 19.., at ..... the said E.... F.... was duly requested to account to this plaintiff for said books and parts of books [or to account for and pay over to this plaintiff such sums] but he has not done so, of which this plaintiff gave due notice to the defendant, and thereupon demanded payment from him of the said sum of ..... dollars, according to the terms of said bond, but the same has not been paid, nor any part thereof.

WHEREFORE, etc.

**1068. On arbitration bond for refusal to comply with award.**

I. That certain differences having arisen between the plaintiff and the defendant, in consideration thereof and in consideration of a like bond executed by this plaintiff to the defendant, the defendant heretofore made and delivered to the plaintiff a bond of arbitration, conditioned to abide the award of M.... N.... upon said differences, of which bond a copy is hereto annexed as a part of this complaint and marked Exhibit A.

II. That on the .... day of ....., 19.., or thereafter, and within the time limited for making the award, by agreement of plaintiff and the defendant the time of the making

of the award was extended to the .... day of ....., 19..]

III. That the said arbitrator, having undertaken the arbitration on the .... day of ....., 19.., duly made and published his award in writing upon the matter submitted, ready to be delivered to the parties, or to such of them as should desire the same, and thereby awarded that the defendant should [*here indicate briefly the provision which the defendant has disregarded*]; of which award a copy is hereto annexed, made part of this complaint and marked Exhibit B.

IV. That the plaintiff duly performed all the conditions of said bond on his part [and on the .... day of ....., 19.., gave notice of said award to the defendant and tendered to him, etc., and demanded of him, etc., etc.]

V. That the defendant has not [*here allege breach, specifying the particular act or omission*].

WHEREFORE, etc.

#### 1069. **Against surety company on bond for fidelity of an employee.**

I. [*Allege incorporation of defendant as in Forms 848 or 849.*]

III. That at the times hereinafter mentioned the plaintiff was engaged in the business of ..... at ..... and in the course of said business necessarily employed travelling salesmen whose duty it was among other things to collect on plaintiff's account moneys due the plaintiff from the sales of goods and account to the plaintiff therefor.

IV. That on the .... day of ....., 19.., plaintiff, having in its employ a certain traveling salesman, named E.... F...., made application to defendant for its bond of indemnity; and thereupon defendant, for the consideration named therein, made and delivered to plaintiff a bond, of which the following is a copy: [*insert copy of bond*].

V. That between the .... day of ..... and the .... day of ....., 19.. and while said bond was in full force, the said E.... F.... having in his possession money to the amount of ..... dollars, which had been received by him as such traveling salesman and collector as aforesaid, to the use of the plaintiff, wrongfully converted the same to his own use, and has not accounted for the same to plaintiff,

though an account thereof has been duly demanded of him, to plaintiff's damage . . . . . dollars.

VI. That plaintiff has duly performed all the conditions of said bond on its part, and has duly demanded payment from defendant of the said sum of . . . . . dollars but the same has not been paid, or any part thereof.

WHEREFORE, etc.

**1070. Complaint on contractor's bond indemnifying against mechanic's liens.**

I. [*Allege execution of contract between plaintiff and the contractor (who, if he was a party to the bond should be joined as a defendant) for the construction of the building and the furnishing of materials therefor.*]

II. [*Allege that for the purpose of protecting the plaintiff and said premises from mechanics liens for labor or materials the defendant contractor as principal and other defendants as sureties executed and delivered a bond giving copy of the bond.*]

III. [*Allege that defendant contractor entered upon the work of building the building and finished it, if such be the fact, but that he failed to pay a large number of claims for labor and materials furnished in the building of the house aggregating . . . . . dollars.*]

IV. [*Allege the filing of various mechanics liens giving names of claimants and dates, also the commencement of suit and the rendition of judgment in the action giving amounts adjudged each claimant.*]

V. [*Allege giving of notice by plaintiff to defendants to defend the action and their neglect to do so.*]

VI. [*Allege that plaintiff necessarily paid the amount of the mechanics lien judgment and costs in order to protect his property from sale under the judgment and that no part of the amount has been repaid by defendants though demanded.*]

WHEREFORE, etc.

## CHAPTER XXXI.

### COMPLAINTS ON OFFICIAL BONDS AND BONDS GIVEN IN ACTION.

- |   |   |
|---|---|
| 1071. Complaint by municipality on bond of public officer.  | 1085. Complaint on undertaking for the prosecution of an action; short form, where undertaking recites the facts. |
| 1072. Complaint for breach of bond of municipal treasurer.  | 1086. On undertaking for costs.   |
| 1073. Complaint for breach of sheriff's bond for neglect to levy.   | 1087. Complaint on appeal bond or undertaking.  |
| 1074. The same, for neglect to sell after levy.   | 1088. Upon attachment bond or undertaking (general form).   |
| 1075. The same, for neglect to return.  | 1089. Upon attachment undertaking (Wisconsin).  |
| 1076. The same, for neglect to pay over moneys collected.   | 1090. Upon an undertaking given by defendant to discharge an attachment (general form).                           |
| 1077. Allegation of judgment against sheriff for breach.  | 1091. On plaintiff's undertaking or bond in replevin (general form).  |
| 1078. Complaint by creditor on administration bond (Wisconsin).   | 1092. On defendant's undertaking in replevin to secure return of the property.                                    |
| 1079. Complaint by heir at law upon administration bond (Wisconsin).  | 1093. On bond to indemnify sheriff.   |
| 1080. By administrator <i>de bonis non</i> on bond of former administrator, alleging maladministration (Wisconsin). | 1094. On an injunction bond or undertaking.   |
| 1081. By legatee on executor's bond (Wisconsin).  | 1095. On a bond to discharge a subcontractor's mechanic's lien (Iowa).  |
| 1082. Complaint by county judge on bond of executor or administrator, for benefit of all parties (Wisconsin).       | 1096. On a bond to release garnishment (Minnesota).   |
| 1083. By heir on administration bond, general form, where leave to sue is not required.                             | 1097. Complaint on administrator's bond and refusal to pay claims allowed by probate court.                       |
| 1084. Allegation of conversion and refusal to account for assets.   | 1098. Complaint on criminal recognition.  |
|   | 1099. Complaint upon the bond of a town treasurer.  |

**1071. Complaint by municipality on bond of public officer.**

I. That the plaintiff at the times hereinafter stated was and still is a municipal corporation organized and existing under the laws of the state of .....

II. That at the municipal election held in said city of ..... on the .... day of ....., 19.., the defendant C.... D.... was duly elected to the office of ..... for the period of .... years from the .... day of ....., 19..

III. That on the .... day of ....., 19.., the said C.... D.... as principal and the defendants E.... F.... and G.... H.... as sureties, made, executed and delivered to the said city of ..... [or filed in the office of ....., *stating the officer in whose office the bond is required by law to be filed*] their certain bond or obligation in writing, of which a copy is attached hereto and made part of this complaint and marked Exhibit A.

IV. That on the .... day of ....., 19.., the said bond was duly approved by [*here state officer or officers whose duty it is to approve bond*] [*if an oath of office is required by law to be executed: and that on the .... day of ....., 19.., the said defendant C.... D.... executed and filed in the office of, state name of officer, his oath of office as required by law*] and that the said C.... D.... thereupon entered upon the duties of his said office and continued to exercise the same until on or about the .... day of ....., 19..

V. That [*here state particularly the acts complained of which constitute breaches of the bond, as, for example, the following form*].

VI. That by reason of the premises, the plaintiff has suffered damages in the sum of ..... dollars with interest from the .... day of ....., 19..

WHEREFORE, etc.

**1072. Complaint for breach of bond of municipal treasurer.**

[*Allege corporate organization of municipality, election and qualification of treasurer and execution of bond, as in paragraphs I, II, III and IV of Form 1071 and proceed as follows*]:

V. That said defendant C.... D.... between the .... day of ....., and the .... day of ....., received various



sums of money as such treasurer, amounting to about the sum of . . . . . dollars, and that he fraudulently, and in the breach of his trust, converted and appropriated to his own use said sum , [or . . . . . dollars of said sum].

VI. That at the municipal election held, etc. [*here allege the election of the defendants' successor and his qualification and entry upon the office*].

VII. That the defendant C. . . . D. . . . at the expiration of his said term of office did not account for or pay over to his said successor in office the said sum of . . . . . dollars and that said sum remains wholly unpaid though demand for the payment thereof was duly made by the said [*name successor*] before the commencement of this action.

VIII. [*Ad damnum clause as in paragraph VI of Form 1071.*]

WHEREFORE, etc.

### 1073. Complaint for breach of sheriff's bond for neglect to levy.

[*After alleging identity of plaintiff and election and qualification of sheriff and execution of bond as in Form 1071, proceed as follows*]:

V. That on the . . . . day of . . . . ., 19. . ., in an action brought by him against one M. . . . N. . . . the plaintiff recovered judgment, duly given by the court of . . . . . against said M. . . . N. . . . for the sum of . . . . . dollars, which judgment was on, etc., duly docketed in the office of the clerk of the . . . . . court for the county of . . . . .

VI. That on the . . . . day of . . . . ., 19. . ., an execution in favor of the plaintiff against the property of said M. . . . N. . . . was duly issued on said judgment and delivered to the said sheriff, of which a copy is attached hereto, made part of this complaint, and marked Exhibit B.

VII. That said sheriff did not execute said process, but although there was then within his county real and personal property belonging to said M. . . . N. . . . of which he might have levied the moneys thereby directed to be levied and of which he had notice, and though more than . . . . days elapsed after the delivery of said execution to said sheriff before the commencement of this action, he neglected and

refused to make such levy, whereby the plaintiff lost his said debt.

VIII. [*Ad damnum clause as in paragraph VI of Form 1071.*]

IX. That on the . . . . day of . . . . ., 19. . ., leave was granted to the plaintiff by the . . . . . court at . . . . . to prosecute said bond by reason of the premises.<sup>1</sup>

X. That on the . . . . day of . . . . ., 19. . ., and prior to the service of the summons in this action, the plaintiff executed and filed with the clerk of this court [*or with J. . . . P. . . ., justice of the peace*] an undertaking for costs signed by two sureties approved by said clerk [*or justice*] conditioned as required by law, which said sureties justified their responsibility by affidavit annexed to said undertaking in the manner prescribed by law, and that a copy of said undertaking and affidavit were duly served upon the defendants at the time of the service of the summons in this action.<sup>2</sup>

WHEREFORE, etc.

#### 1074. The same, for neglect to sell after levy.

[*Follow Form 1073, inserting in lieu of paragraph VII the following:*]

VII. That the said sheriff, by virtue thereof, on the . . . . day of . . . . ., 19. . ., levied on the goods of said M. . . . N. . . . of the value of . . . . . dollars; but he neglected to advertise and sell the goods so levied on by him as aforesaid, and

<sup>1</sup>In Oregon (Oregon Laws, 1910 sec. 348-350) and Washington (Wash. Rem. and Bal. Code, 1910 sec. 958-960) and Minnesota (Minn. Gen. Stats. 1913 sec. 8211), where the action is brought by a private person, leave to bring the same must be obtained. But it is held in Minnesota that leave to sue need not be alleged. *Hautzsch vs. Massolt*, 35 Minn. 167; 28 N. W. 191. In none of the above states is security for costs required.

<sup>2</sup>In Wisconsin (Wis. Stats. 1913 sec. 985 and 986) and Missouri (Mo. R. S. 1909 sec. 1212, 1218 and 2258) no leave is necessary, but in any action by a private person upon

an official bond security for costs must be given before the service of summons, and in Wisconsin a copy of the undertaking must be served on the defendant with the summons. In the other states covered by this work neither leave to sue nor security for costs seem to be necessary. Ariz. R. S. 1913 sec. 199; Iowa Ann. Code 1897 sec. 4336; Kans. Gen. Stats. 1909 sec. 6308; Mont. Rev. Codes, 1907 sec. 391; Neb. R. S. 1913 sec. 5654; Okla. Comp. Laws 1909 sec. 6222; Tex. Civ. Stats. Ann. 1913 art. 7121; Utah Comp. Laws 1907 sec. 1684; Wyo. Comp. Stats. 1910 sec. 4312.

although more than . . . days elapsed after the delivery of said execution to said sheriff before the commencement of this action, no part of the moneys directed to be collected on the plaintiff's said execution has been received by the plaintiff and the plaintiff has lost his said debt.

*[Insert allegations as to leave to prosecute, or undertaking for costs as in preceding form.]*

**1075. The same, for neglect to return.**

*[Follow Form 1073, inserting in lieu of paragraph VII the following]:*

VII. That said sheriff, by virtue of said execution, on the . . . day of . . . , 19. . . , levied on the goods of said M. . . . N. . . . of the value of . . . . dollars, but although more than sixty days *[or state other time within which the statute requires writ to be returned]* elapsed after its delivery to him and before this action, wholly neglected and failed to make return of said execution and no part of the moneys directed to be collected thereby has been received by the plaintiff, and the plaintiff has lost his said debt.

**1076. The same, for neglect to pay over moneys collected.**

*[Follow Form 1073, inserting in lieu of paragraph VII, the following]:*

VII. That the said sheriff thereafter collected and received upon said execution, for the use and benefit of plaintiff the sum of . . . . dollars, besides the costs and his lawful fees thereon. That more than . . . days had elapsed since the issuance and delivery of said execution to the said sheriff before this action was commenced. That said defendant, in violation of his duty as said sheriff, has failed and neglected to pay over to the plaintiff the amount so collected or any part thereof, though often requested so to do, amounting to the sum of . . . . dollars, no part of which has been paid.

**1077. Allegation of judgment against sheriff for breach.**

*[Where judgment has been obtained against the sheriff insert immediately after paragraph VII in Form 1073 the following]:*

VIII. That thereafter, and on and about the . . . day of . . . , 19. . . , in an action brought by the plaintiff in the

..... court, he recovered a judgment duly given against the said sheriff for the sum of ..... dollars, for the damages which the relator had sustained by the neglect of the sheriff to execute [or return] said process, and ..... dollars costs of his said action, and no part thereof has been paid to the plaintiff.

IX, X and XI. [As in paragraphs VIII, IX and X of Form 1073.]

WHEREFORE, etc.

**1078. Complaint by creditor on administration bond**  
(Wis. Stats. 1913 secs. 4014, 4015, 4016).

I. That on the .... day of ....., 19.., one [*intestate*] died a resident of said county of ..... and that on or about the .... day of ....., 19.., A.... B.... [*administrator*] was by order of the ..... court of ..... county duly appointed administrator of the estate of said [*intestate*].

II. That on the .... day of ....., 19.., the said [*administrator*] together with the defendants [*sureties*] executed and delivered to J.... K...., judge of the ..... court of said county, their joint and several obligation in writing, of which a true copy is attached hereto, made part of this complaint and marked Exhibit A.

III. That the said instrument was thereupon duly approved by the .... judge aforesaid and letters of administration were thereafter and on the .... day of ....., 19.. duly issued by said court to the said [*administrator*] who thereupon entered upon the duties of his said trust and took possession of the property and assets of the estate of said [*deceased*] amounting in all to the sum of ..... dollars.

IV. That the said [*intestate*] was during his lifetime indebted to the said plaintiff in the sum of ..... dollars, with interest from ....., 19.., and that on the .... day of ....., 19.., the said claim of this plaintiff was upon due presentation adjusted and allowed by the said ..... court of ..... county at the sum of ..... dollars.

V. That thereafter and on the .... day of ....., 19.., an order was duly made and entered by the said ..... court of ..... county, ordering and requiring the said [*administrator*] to pay to this plaintiff the said sum of ..... dollars, and that on the .... day of ....., 19.., this plain-

tiff demanded payment thereof from the said [administrator] but that said administrator then refused and still refuses to pay the same.

VI. That thereafter and on the .... day of ....., 19.., upon application duly made therefor, the said ..... court of ..... county, by written order granted permission to the plaintiff to prosecute this action in his own name.

WHEREFORE the plaintiff demands judgment against the said defendants for the sum of ..... dollars, with interest from [date of demand] with the costs of this action.

E.... F....

Plaintiff's Attorney.

**1079. Complaint by heir at law upon administration bond (Wisconsin).**

[I, II and III as in last preceding Form.]

IV. That the plaintiff was and is one of the heirs at law, to-wit, the son [or daughter, or otherwise] of said [deceased] and as such entitled to a one-third [or other] share in the estate of said deceased after the payment of debts and expenses of administration.

V. That thereafter, and on the .... day of ....., 19.., the said [administrator] duly accounted before the ..... court of ..... county for his acts as such administrator, and upon such accounting it was duly adjudged and decreed by said court on the .... day of ....., 19.., that the said [administrator] had in his hands of the assets of said estate a balance of ..... dollars, and that the said [administrator] pay one-third [or other share] of such balance, to-wit, the sum of ..... dollars to the plaintiff as his distributive share of said estate.

VI. That thereafter, and on the .... day of ....., 19.., this plaintiff demanded payment of said sum of ..... dollars from the said [administrator] but that he then refused and still refuses to pay the same.

[Allege application and leave to sue, as in last preceding form.]

WHEREFORE, etc. [As in last preceding Form.]



**1080. By administrator de bonis non on bond of former administrator, alleging maladministration (Wisconsin).**

[I, II and III, as in Form 1078.]

IV. That on the .... day of ....., 19.., the said [administrator] died [or was removed as such administrator, or tendered his resignation as administrator of said estate, which was duly accepted by the ..... court of ..... county, and that thereafter and on the .... day of ....., 19.., this plaintiff was by the ..... court of said ..... county duly appointed administrator *de bonis non* of said estate, and duly qualified as such and is now acting as such administrator *de bonis non*.

V. That said [administrator] collected and received assets belonging to said estate amounting to ..... dollars and converted the same to his own use and refused and neglected to account therefor to the said court or to any court having jurisdiction thereof.

VI. That on the .... day of ....., 19.., the plaintiff demanded payment of said sum from the said [administrator] and a settlement of his accounts, but said [administrator] refused to make said payment or to file an account with the said court.

VII. [*Allege obtaining of leave to sue as in Form 1078.*]

WHEREFORE, etc.

**1081. By legatee on executor's bond (Wisconsin).**

I. That on the .... day of ....., 19.., one [testator] died a resident of said county of ..... leaving his last will and testament duly executed, by the terms of which the said [testator] bequeathed to this plaintiff the sum of ..... dollars [or a copy of which will is hereto annexed, marked Exhibit A, and made a part of this complaint.]

II. That thereafter and on the .... day of ....., 19.., upon application duly made for that purpose, the said last will and testament was by the judgment and decree of the ..... court of ..... county duly admitted to probate as and for the last will and testament of the said deceased, and the defendant [executor] was by order of said court appointed executor of said last will and testament and of the estate of said deceased.

III. and IV. [*As in paragraphs II and III of Form 1078, with incidental changes made necessary by the fact that the bond sued on is that of an executor instead of an administrator.*]

V. and VI. [*As in paragraphs V and VI of Form 1080, with necessary changes.*]

[*Allege application and leave to sue as in Form 1080.*]

WHEREFORE, etc. [*As in Form 1078.*]

**1082. Complaint by county judge on bond of executor or administrator, for benefit of all parties (Wis. Stats. 1913 secs. 4014 subd. 4 and 4015).**

I. That the plaintiff is now and was at the dates herein-after mentioned the judge of the county court of ..... county, Wisconsin, duly elected and qualified and brings this action in his said capacity as such judge by virtue of the statutes in such case made and provided.

II. [*Allege the death of the testator or intestate, the probate of his will if any, the appointment of the executor or administrator, the giving and approval of his bond, and the receipt of the assets of the estate by him, as in the preceding Forms.*]

III. [*Allege the accounting of the executor or administrator, and the final order thereon, as in paragraph V of Form 1079, setting forth the final order in full so as to show the amounts ordered to be paid to all parties.*]

IV. That the said [*executor or administrator*] upon demand duly made has refused and neglected, and still refuses and neglects to comply with said judgment of distribution, or to pay over any of the sums so ordered to be paid.

WHEREFORE the plaintiff, in his capacity as county judge aforesaid, demands judgment against the said defendants for the sum of ..... dollars [*full sum found due on accounting*] with interest from ....., 19.., and for the costs of this action.

E.... F....

Plaintiff's Attorney.

**1083. By heir on administration bond, general form, where leave to sue is not required.**

I. That on or about the .... day of ....., 19.. [*intestate*] departed this life, and that [*administrator*] on or about the .... day of ....., 19.., was duly appointed adminis-

trator of his estate, who thereupon, with [sureties] executed and delivered to the . . . . . court of . . . . . county, their joint and several obligation in writing, of which a copy is hereto annexed, made a part hereof, and marked Exhibit A.

II. That said instrument was thereafter, and on the . . . . day of . . . . ., 19.., duly approved by the . . . . . judge of said county, and said [administrator] thereupon entered upon the duties of said administration and collected and received a large amount of assets belonging to said estate.

III. That on the . . . . day of . . . . ., 19.., said [administrator] settled in said court his accounts of his said trust, and said court adjudged that there remained in his hands, after the payment of all debts and expenses, the sum of . . . . . dollars, which he was required by order and judgment of said court to pay to the heirs of said estate as follows [*insert terms of the order*].

IV. That on the . . . . day of . . . . ., 19.., he demanded of [administrator] said sum of . . . . . dollars, which by the terms of said judgment said [administrator] was required to pay to the plaintiff, but that said [administrator] then refused and still refuses to pay the same to this plaintiff, or any part thereof.

WHEREFORE, etc. [*Demand for judgment for amount ordered paid, with interest from demand.*]

#### 1084. Allegation of conversion and refusal to account for assets.

[*I and II as in last preceding Form.*]

III. That the following goods and chattels [*describe the goods, chattels, rights or credits which it is claimed came into the possession of the administrator but were not entered in the inventory*] belonging to said estate, came into the possession of said administrator, which assets the said [administrator] neglected and refused to return in the inventory of property belonging to said estate, but has converted the same to his own use and wholly failed and refused to account for the same in his accounts as administrator or in his settlement with his said court.

IV. That the plaintiff is one of the heirs at law of said deceased, and entitled as such to one-third [*or other*] share in the distribution of said estate.

V. That by reason of the premises the plaintiff has sustained damage in the sum of ..... dollars.

WHEREFORE, etc.

**1085. Complaint on undertaking for the prosecution of an action; short form, where undertaking recites the facts (sustained in *Morange v. Mudge*, 6 Abb. Pr. 243).**

I. That on or about the .... day of ....., 19.., the defendant made and executed an undertaking, a copy of which is hereto annexed and made a part of this complaint and marked Exhibit A.

II. That thereafter and on or about the .... day of ....., 19.., judgment was recovered in the action mentioned in said undertaking against the plaintiff and in favor of the defendant therein for the sum of ..... dollars [*or otherwise, according to the fact*].

III. That on or about the .... day of ....., 19.., a transcript of said judgment was duly filed in the office of the clerk of the ..... court for ..... county, and on the same day an execution against the property of the plaintiff named in said undertaking was duly issued to the sheriff of ..... county, and after the expiration of sixty days was returned wholly unsatisfied.

IV. That on or about the .... day of ....., 19.., the plaintiff duly demanded payment of the said sum of ..... dollars from the defendant in this action, but that no part thereof has been paid.

WHEREFORE, etc.

**1086. On undertaking for costs.**

I. That heretofore one M.... N.... commenced an action in this court [*or in the ..... court*] against this plaintiff, wherein such proceedings were had as that on the .... day of ....., 19.., the defendants above named executed and duly filed with the clerk of said court, for the benefit of this plaintiff an undertaking whereby they undertook and agreed [*set forth conditions of undertaking*] [*or an undertaking of which a true copy is annexed hereto, made part of this complaint and marked Exhibit A.*]

II. That such proceedings were thereafter had in said action as that this plaintiff, on the . . . . day of . . . . ., 19.., recovered judgment therein against the said M.... N.... for . . . . . dollars, his costs and expenses of defending said action.

III. That on the . . . . day of . . . . ., 19.., at . . . . . this plaintiff duly demanded payment of the said judgment from the said M.... N.... but no part thereof has been paid.

WHEREFORE, etc.

### 1087. Complaint on appeal bond or undertaking.<sup>3</sup>

I. That on the . . . . day of . . . . ., 19.., the plaintiff recovered a judgment against the defendant A.... B.... in the sum of . . . . . dollars and costs, in an action pending in the . . . . . court of . . . . . county, wherein this plaintiff was plaintiff and the said A.... B.... was defendant.

II. That thereafter the defendant, said A.... B...., duly perfected his appeal from said judgment to the . . . . .

<sup>3</sup>Where the statutes provide for entry of judgment against the sureties as well as against the principal upon the determination of the appeal itself, this action is of course not necessary. The statutes of Wisconsin so provide in case of appeals from the circuit to the supreme court. Wis. Stats. 1913 sec. 3067; and the following states have similar provisions: Ariz. R. S. 1913 sec. 1271; Ark. Dig. of Stats. 1904 sec. 1235; Oregon Laws 1910 sec. 559, subsec. 4; Wash. Rem. and Bal. Code 1910 sec. 1739.

In some states, on appeal from money judgment, on motion of respondent, judgment is entered against sureties if appellant does not pay judgment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken: Cal. C. C. P. 1906 sec. 942; Colo. Code Ann. 1911 sec. 422; Idaho Rev. Codes 1908 sec. 4810; Mont. Rev. Codes 1907 sec. 7102; Utah Comp. Laws 1907 sec. 3307.

In Iowa the supreme court, if it affirms the judgment, will also, if the appellee asks or moves therefor, render judgment against the appellant and his sureties on the appeal bond for the amount of the judgment, *damages* and costs referred to therein in case such damages can be accurately known to the court without an issue and trial. Upon the affirmance of any judgment or order for the payment of money, the collection of which in whole or part has been stayed by an appeal bond, the court may award to the appellee damages upon the amount so stayed; and, if satisfied by the record that the appeal was taken for delay only, may award as damages a sum not exceeding fifteen per cent. thereon. Iowa Ann. Code 1897 sec. 4140; 4141.

In Kansas the sureties on an appeal or supersedeas bond are only liable by action brought on the bond. *Waysman vs. Updegraph*, McCahon's Kans. Rep. 88.



court of . . . . . county, and on the . . . . day of . . . . ., 19. . . , with the defendants C. . . . D. . . . and E. . . . F. . . . as sureties, duly executed and filed with the clerk of said . . . . . court an appeal bond [*or* undertaking] which bond, [*or* undertaking] was duly approved by the clerk of said court [*or* judge of said court] and a copy of which is hereto attached, marked Exhibit A, and made part of this complaint.

III. That on the . . . . day of . . . . ., 19. . . , said . . . . . court in said action rendered a judgment in favor of the plaintiff and against the defendant A. . . . B. . . . for the sum of . . . . . dollars with his costs [*or* affirming said judgment so appealed from, with . . . . . dollars costs] and that the plaintiff on the . . . . day of . . . . ., 19. . . , served notice of the rendition of said last named judgments upon the defendants and demanded payment thereof.

IV. That neither of said judgments has been paid, nor any part thereof.

WHEREFORE, etc.

#### 1088. Upon attachment bond or undertaking (general form).

I. That on the . . . . day of . . . . ., 19. . . , said C. . . . D. . . . commenced in the . . . . . court of . . . . . county an action against this plaintiff, and duly made and filed his affidavit for a writ [*or* warrant, *or* order] of attachment therein, in which he alleged as a ground of attachment [*state ground alleged*].

II. That at the same time said defendant C. . . . D. . . . as principal and E. . . . F. . . . and G. . . . H. . . . as sureties executed and delivered to the clerk of said court an undertaking [*or* bond] which was approved by the said clerk [*if approval be necessary*] which undertaking [*or* bond] was conditioned [*state the conditions*] [*or* of which a true copy is annexed to this complaint, made a part hereof and marked Exhibit A].

III. That upon the filing of said affidavit of attachment and undertaking [*or* bond] and at the request of the said C. . . . D. . . . a writ [*or* warrant, *or* order, as it may be named in the statutes of the particular state] was duly issued out of said court, and under the seal thereof, directed to the sheriff of said county, and commanding him to [*state command of*

*writ*] which said writ [*or warrant, etc.*] was received by said sheriff, who thereupon and on the . . . . day of . . . . ., 19. ., as such sheriff and in pursuance of such command levied upon and seized the following described personal property of the plaintiff [*describe property*] and held possession thereof for the space of . . . . days.

IV. That no just ground in fact existed for the issuance of the said writ, [*or warrant, etc.*], that the plaintiff was not at the time of the making of said affidavit and the issuance of said writ about to conceal or convey his property with intent to defraud his creditors [*or otherwise specifically negative the grounds of attachment stated in the affidavit*] and that the statements in said affidavit set forth as grounds for the issuance of said writ were untrue in fact and that the said writ [*or warrant*] was wrongfully sued out.

V. That on the . . . . day of . . . . ., 19. ., the said attachment was, upon proceedings duly had, vacated and dissolved by order of the . . . . . court, with costs.

VI. [*State damages suffered, as for instance*]: That at the time said writ [*or warrant*] of attachment was levied upon the goods of plaintiff as aforesaid he was engaged in the business of . . . . . at the town of . . . . . and that by reason of said levy and the removal of said goods by the officer under said order the business of the plaintiff was interrupted for the period of . . . . days and his credit greatly impaired [*or ruined*] whereby he has sustained damages, by reason of the wrongful suing out of said attachment, in the sum of . . . . . dollars, no part of which has been paid.

WHEREFORE, etc.

### 1089. Upon attachment undertaking (Wisconsin).<sup>4</sup>

[*I, II and III as in last preceding form.*]

IV. That thereafter and within the time required by law the plaintiff, by special answer, duly traversed said affidavit,

<sup>4</sup>In Wisconsin the defendant in attachment may, by special answer, traverse the statements of the affidavit and the issue thus raised is tried by the court independently of the trial of the action, and if the court on the trial of the traverse finds for the de-

fendant the property seized is at once delivered up, and the damages suffered by the defendant are assessed on the trial of the main issue, and either deducted from the plaintiff's recovery or, if the defendant defeats the plaintiff's claim, judgment is at once entered

and that the issue arising on such traverse was tried before the . . . . . court on the . . . . day of . . . . ., 19.., and that said court then found and determined the issues so arising for this plaintiff, and made an order for the redelivery of said property to this plaintiff.

V. That thereafter and on the . . . . day of . . . . ., 19.., the said action was tried before the . . . . . court, and upon such trial judgment was duly rendered for this plaintiff and the damages sustained by this plaintiff by reason of the wrongful suing out of said writ of attachment were then and there assessed at the sum of . . . . . dollars, and judgment for said sum together with the costs of said action was duly rendered by said court, no part of which judgment has been paid, and the same is unreversed and unappealed from.

WHEREFORE, etc.

**1090. Upon an undertaking given by defendant to discharge an attachment (general form).**

I. That on or about the . . . . day of . . . . ., 19.., in an action pending in the . . . . . court of . . . . . county wherein this plaintiff was plaintiff and one A.... B.... was defendant, a writ [*or* warrant of attachment was duly issued to the sheriff of said county and by him levied upon certain personal property of said A.... B....

II. That thereafter, and on or about the . . . . day of . . . . ., 19.., the said A.... B...., for the purpose of procuring a discharge of said attachment, as by statute provided, filed in said court an undertaking executed to the plaintiff by E.... F.... and G.... H...., the above named defendants, a copy of which undertaking is hereto attached, marked Exhibit A, and made a part of this complaint.

III. That said attachment was thereupon discharged and said property restored to said A.... B.... and that thereafter judgment was duly rendered in said action in favor of plaintiff and against the said A.... B.... for the sum of . . . . . dollars.

for the defendant for the amount of such excess in one case, or the whole amount of his damages in

the other case, against the plaintiff. Wis. Stats. 1913 sec. 2745 to 2748 inclusive.

IV. That [thereafter, on or about the . . . . day of . . . . ., 19.., plaintiff demanded payment of said judgment and costs, but that] no part thereof has been paid.

WHEREFORE, etc.

**1091. On plaintiff's undertaking or bond in replevin (general form).**

I. That on or about the . . . . day of . . . . ., 19.., the defendant A. . . . B. . . . commenced an action in the . . . . . court of . . . . . county against the plaintiff to recover possession of certain specific personal property, to-wit, [*describe property*] and thereupon \* delivered to the sheriff of . . . . . county the affidavit and requisition required by law for the obtaining of the immediate delivery of the said property. [*In Nebraska, after the \* substitute: and thereupon an order of delivery was issued in said cause to the sheriff of . . . . . county.*]

II. That on said last named day the above named defendants made and delivered to said sheriff a written undertaking [*or bond, according to the fact*] whereby they jointly and severally undertook and agreed [*recite conditions of bond*] [*or a copy of which is hereto annexed, made part of this complaint, and marked Exhibit A.*]

III. That under and pursuant to the said affidavit, requisition and undertaking [*or bond*] [*or, in Nebraska, pursuant to the said order of delivery and undertaking*] the said sheriff on or about the . . . . day of . . . . ., 19.., replevied and took said property from the possession of the plaintiff and delivered the same to the defendant A. . . . B. . . .

IV. That thereafter and on or about the . . . . day of . . . . ., 19.., judgment was duly rendered by said court in said action, wherein it was adjudged that said property be returned to this plaintiff, or that he recover the value thereof in case a return could not be had, and damages for the taking and withholding thereof, and wherein it was further adjudged that said property was of the value of . . . . . dollars, and that this plaintiff's damages were the sum of . . . . . dollars.

V. That said property has not been returned to this plaintiff, nor has the said value thereof nor any part of said damages been paid.

WHEREFORE, etc.

**1092. On defendant's undertaking in replevin to secure return of the property.**

I. That heretofore and on or about the .... day of ....., 19.., this plaintiff commenced an action in the ..... court against one C.... D.... to recover possession of certain personal property described as follows [*insert description*].

II. That such proceedings were thereafter had in said action that on or about the .... day of ....., 19.., the defendants made and delivered to the sheriff of ..... county their written undertaking, of which a copy is hereto annexed, made part of this complaint, and marked Exhibit A.

III. That such proceedings were thereafter had in said action, that on or about the .... day of ....., 19.., this plaintiff recovered judgment, which was duly given by said court in said action against said C.... D.... the defendant therein, that the plaintiff recover possession of said property, or the sum of ..... dollars in case a delivery could not be had, and for the sum of ..... dollars damages and costs.

IV. That no return of the property has been had, and no part of said judgment has been satisfied.

WHEREFORE, etc.

**1093. On bond to indemnify sheriff.**

I. That the plaintiff at all the times hereinafter mentioned was the duly elected and qualified sheriff of the county of ..... and was performing the duties of such office.

II. That on the .... day of ....., 19.., the defendant caused an execution to be issued out of the ..... court of ..... county upon a judgment before that time recovered by said defendant in said court against one A.... B...., which execution was delivered to plaintiff as sheriff aforesaid.

III. That the defendant C.... D.... thereupon demanded of the plaintiff that he levy said execution upon certain personal property as the goods and chattels of the said A.... B...., but which goods and chattels were then and there afterwards claimed by one E.... F...., and that



the said plaintiff refused to make such levy unless indemnified therefor.

IV. That thereupon the defendant, for the purpose of indemnifying the plaintiff, executed and delivered to plaintiff an obligation in writing, a copy of which is hereto annexed, marked Exhibit A, and made a part of this complaint.

V. That thereupon the plaintiff, as sheriff aforesaid, relying on said obligation, levied upon and sold said goods under said execution and paid over the proceeds of said sale, less costs, to the defendant.

VI. That on the .... day of ....., 19.., said E.... F.... brought an action against the plaintiff for the conversion of said goods so levied upon under said execution, and on the .... day of ....., 19.., recovered a judgment against the plaintiff for the sum of ..... dollars as the value of the goods, and ..... dollars costs, and the plaintiff was compelled to pay the sum of ..... dollars necessary expenses in defending said action.

That on the .... day of ....., 19.., said defendant was duly notified of the pendency of said action and afterwards that judgment had been rendered against the plaintiff in said cause, but he has failed and neglected to pay the same and save plaintiff harmless as provided in said bond.

That plaintiff has sustained damages, by reason of the premises, in the sum of ..... dollars.

WHEREFORE, etc.

#### 1094. On an injunction bond or undertaking.

I. That on or about the .... day of ....., 19.., in an action brought by A.... B.... against this plaintiff, an injunctional order issued out of this court [or the ..... court] was duly served on this plaintiff, by which this plaintiff was temporarily enjoined from [*state effect of injunction*].

II. That at the time of the issuing of the said injunctional order in the said action, and for the purpose of causing the same to be issued the defendants made and filed a written undertaking in said court by which they jointly and severally undertook and agreed to pay the plaintiff all damages he might sustain, not exceeding the sum of ..... dollars if it should finally be decided that the plaintiff was not entitled

to said order, a copy of which is hereto annexed, marked Exhibit A, and made part of this complaint.

III. That on or about the .... day of ....., 19.., judgment was duly rendered by said court in said action, and it was thereby adjudged that the said A.... B.... was not entitled to the said injunctive order, and the same was dissolved and vacated.

IV. That the damages sustained by this plaintiff by reason of the said injunctive order amounted to the sum of ..... dollars, and interest from the .... day of ....., 19.., which the said court on that day determined and awarded to this plaintiff, and that no part thereof has been paid.

WHEREFORE, etc.

*[If special damages have been sustained such as the payment of attorneys' fees in securing dissolution of the injunction or consequential damages to business the facts should be pleaded.]*

**1095. On a bond to discharge a subcontractor's mechanic's lien (Iowa Code 1897 sec. 3093).**

*[Allege the furnishing of materials or labor, the filing of the claim, and the giving of notice to the owner, as in the appropriate Form in Chapter LXVIII, post, and continue:]*

That on or about the .... day of ....., 19.., said [owner or principal contractor] filed with the clerk of said court a bond duly executed by him, with the defendants J.... K.... and L.... M.... as sureties, in the sum of ..... dollars, which bond was duly approved by said clerk and conditioned for the payment of any sum for which the plaintiff might obtain judgment upon the demand for which such statement or account was filed, and thereupon said premises were discharged from said lien.

*[Allege rendition of judgment against owner or principal contractor, and its nonpayment.]*

WHEREFORE, etc.

**1096. On a bond to release garnishment (Minn. Gen. Stats. 1913 sec. 7886).**

I. That on the .... day of ....., 19.., in an action on contract for the recovery of money then pending in the ..... court of ..... county, Minnesota, wherein this

plaintiff was plaintiff and the defendant C.... D.... was defendant such proceedings were had that one E.... F.... was duly summoned as garnishee by the personal service of a garnishee summons on him, whereby all the money and property in his hands or under his control belonging to the defendant C.... D.... and all indebtedness then owing by him to said C.... D.... were duly attached and bound to respond to the final judgment in said action.

II. That a copy of said garnishee summons together with a notice to the defendant C.... D.... stating the time, place and manner of the service of said summons on said E.... F.... signed by L.... M.... the plaintiff's attorney in said action, and requiring said C.... D.... to appear and take part in the examination of said E.... F...., was on ....., 19.., ten days before the time fixed in said summons for the appearance of said E.... F...., duly and personally served on said defendant C.... D....

III. That for the purpose of releasing said garnishment the defendant C.... D.... as principal and the defendants G.... H.... and J....K.... as sureties executed a bond conditioned and provided by law, of which a copy is attached hereto made part hereof and marked Exhibit A.

IV. That said bond was duly approved by ..... judge of said court who thereupon ordered said garnishment to be discharged, and the property bound thereby released; and that on the .... day of ....., 19.., said order and bond were duly filed in said court and a copy of said order duly and personally served on said E.... F....

V. That such proceedings were thereafter had in said action, that judgment was duly rendered therein by said court against the defendant C.... D.... for ..... dollars on the .... day of ....., 19.., no part of which has been paid.

WHEREFORE, etc.

### 1097. Complaint on administrator's bond and refusal to pay claims allowed by probate court.

I. [*Allege the death of the intestate, the issuance of letters of administration to the defendant and his qualification as administrator.*]

II. [*Allege the giving of the bond in suit by the administrator and the defendant sureties and its approval, attaching a copy of the bond.*]

III. [*Allege the filing of the plaintiff's claim in the probate court and the allowance thereof, or, if it was disallowed and an appeal taken, allege those facts and show the final judgment by which the claim was allowed.*]

IV. [*Allege that the time fixed for the presentation of claims against the estate has expired and that the defendant has in his hands sufficient funds of the estate to pay all claims.*]

V. [*Allege demand and refusal.*]

VI. [*Allege that prior to the commencement of the action the probate court duly authorized the plaintiff to prosecute the same.*]

WHEREFORE, etc.

### 1098. Complaint on criminal recognizance.

I. [*Allege indictment of principal by grand jury, or filing of information, as the case may be, also the arraignment on such indictment or information.*]

II. [*Allege the execution of the recognizance and the filing thereof by the principal and the defendants as his sureties and attach a copy thereof.*]

III. [*Allege that the criminal case was duly reached and called, the principal called three times, in open court and at the front door of the court house, and his failure to answer or appear, and that the sureties were likewise duly called and failed to produce their principal in court.*]

IV. [*Allege that after such failure of the defendants to produce their principal the recognizance was declared forfeited by the court and the defendants adjudged to be in default, and such judgment duly recorded.*]

V. [*Allege demand and nonpayment.*]

WHEREFORE, etc.

### 1099. Complaint upon the bond of a town treasurer.

I. [*Allege that plaintiff is and was, at the dates named afterwards in the complaint, a town duly organized and existing in the county of . . . . .*]

II. [*Allege the election of the principal defendant as treasurer of the plaintiff town and that he was such treasurer from*

*the time of his qualification until the expiration of his term.]*

III. [*Allege that upon the election of the principal defendant and in order to qualify for his said office he as principal and the other defendants as sureties signed, executed and delivered to the plaintiff town an official bond as required by law attaching a copy of the bond; allege also the approval and filing of the bond as required by law.*]

IV. That during the term of office of said defendant, there came to the hands of said defendant and were received by him as such treasurer of said town, the plaintiff, the sum of . . . . . dollars; and that there was disbursed and paid out by him the sum of . . . . . dollars, leaving a balance in his hands of . . . . . dollars, which should have been accounted for to said town by him upon the expiration of his term of office.

V. That on the . . . . day of . . . . ., 19.., the term of office of the said C. . . . D. . . . expired and he was succeeded in said office by [*name successor*], who was the duly elected and qualified successor of said defendant as such treasurer.

VI. That upon the settlement of the said defendant with the town board of audit and their examination of his accounts, on the . . . . day of . . . . ., 19.., it appeared, as the fact is, as the plaintiff is informed and believes, that the said balance above stated remained in his hands of the moneys of said town.

VII. That said defendant, in breach of the said bond, has hitherto neglected and refused, and still neglects and refuses, to pay over to his successor, according to law, or to account for said sum of . . . . . dollars, although demand was made therefore by [*name successor*] his successor, and by the plaintiff on the . . . . day of . . . . ., 19..; and no part thereof has been paid.

WHEREFORE, etc.



## CHAPTER XXXII.

### COMPLAINTS ON GUARANTIES.

- |  |  |
|--|--|
| 1100. Against sureties for rent.                               | debt.  |
| 1101. Against principal and sureties on contract for services. | 1104. On a guaranty of a mortgage debt, to recover deficiency. |
| 1102. Against guarantor, for goods sold to third person.       | 1105. Guaranty of collection of note.                          |
| 1103. On guaranty of an existing                               | 1106. Guaranty of payment of note.                             |

#### 1100. Against sureties for rent.

I. That on or about the .... day of ....., 19.., one M.... N.... by agreement in writing with this plaintiff, hired of the plaintiff, [*designating the premises, e. g. thus: the building No. .... Street, in the city of .....*] at the yearly rent of ..... dollars, payable [quarterly] on the .... day of, etc.

II. That the defendant, in consideration of the premises and of one dollar to him paid, and as security for the punctual payment of said rent, then and there subscribed and delivered to the plaintiff an agreement in writing, of which the following is a copy [*insert copy of guaranty*] [*or say, an agreement in writing, and thereby agreed that if any default should be made therein he would pay to the plaintiff such sums of money as should be sufficient to make up such deficiency and fully satisfy the conditions of said agreement, without requiring any notice of nonpayment or proof of demand made*].

III. That said M.... N.... entered into possession of said premises under said lease ....., 19.., and occupied the same until ....., 19.., but has failed to pay the rent due thereon from ....., 19.. until ....., 19.. amounting to the sum of ..... dollars.

IV. That before the commencement of this action [and on the .... day of ....., 19..] the plaintiff [duly demanded of said M.... N.... payment thereof, and gave to the defendant due notice and proof of said demand and non-

payment, and then and there] duly demanded payment from the defendant of said sum, but no part thereof has been paid.

WHEREFORE, etc.

### 1101. Against principal and sureties on contract for services.<sup>1</sup>

I. That heretofore certain articles of agreement were made and entered into between the plaintiff, of the first part, and the said defendant C.... D.... of the second part, under their respective hands and seals, and bearing date the .... day of ....., 19.., of which a copy is hereto annexed, made a part of this complaint and marked Exhibit A.

II. That on the .... day of ....., 19.., simultaneously with said agreement, and in consideration thereof, the said defendants E.... F.... and G.... H.... executed an agreement in writing, under their respective hands and seals, written at the foot of said agreement, of which a copy is hereto annexed, made a part of this complaint and marked Exhibit B.

III. That the plaintiff afterwards duly performed all the conditions of the said contracts on his part, and that the same were fully completed on the .... day of ....., 19.., and that on that day he was entitled to have and receive from the said defendant C.... D.... and the said defendants E.... F.... and G.... H.... upon the said contract, for the said work, a large sum of money, viz., the sum of ..... dollars.

IV. That the said defendants have wholly failed to perform the said contracts on their parts, and have wholly neglected and refused to pay the said sum of ..... dollars, and are now indebted to the plaintiff, upon the said contract, in the sum aforesaid, with interest from, etc.

WHEREFORE, etc.

### 1102. Against guarantor, for goods sold to third person.<sup>2</sup>

I. That on the .... day of ....., 19.., at ....., in

<sup>1</sup> See note to Form 1101.

<sup>2</sup> Upon an absolute guaranty of payment or performance of a contract no notice to the guarantor of demand upon or default of the

original promisor is necessary, *Hubbard v. Haley*, 96 Wis. 578 71 N. W. 1076; 32 Cyc. pp. 106 and 107. *Contra* apparently: *Wagon Co. v. Dier*, 10 Nebr. 284; 4 N. W. 995.

consideration that the plaintiff, at the request of the defendant would sell to one M.... N...., on a credit of ..... months, such goods as said M.... N.... should desire to buy of this plaintiff [*or other consideration*] the defendant promised, by agreement in writing, to be answerable to the plaintiff for the payment by said M.... N.... of the price of goods so sold on credit [*if the amount of the guaranty was limited, add: to an amount not exceeding a total credit of ..... dollars at any one time, or otherwise, as the limit may have been*] a copy of which agreement is attached hereto, made a part of this complaint, and marked Exhibit A.

II. That this plaintiff afterwards, and on the faith of said guaranty, sold and delivered to said M.... N.... [*designate briefly the goods sold*] for the sum of ..... dollars, upon a credit of ..... months, which sum became due therefor from said M.... N.... to this plaintiff, on etc.

III. That payment of the same was thereafter duly demanded from said M.... N...., but the same was not paid; of all which due notice was given to the defendant.

IV. That on the .... day of ....., 19.., at ..... payment of the same was duly demanded by the plaintiff from the defendant, but no part thereof has been paid [except the sum of, etc.].

WHEREFORE, etc.

### 1103. On guaranty of an existing debt.<sup>3</sup>

I. That on the .... day of ....., 19.., at ....., one M.... N...., being then indebted to this plaintiff in the sum of ..... dollars, which sum was then [*or, on the .... day of ....., 19.., became*] due and payable to the plaintiff, the defendant for a valuable consideration then paid to him by plaintiff, made and subscribed a memorandum in writing, of which the following is a copy: [*copy of the guaranty*] and delivered the same to the plaintiff.

II. That the said M.... N.... has never paid said indebtedness, and that plaintiff duly performed all the con-

<sup>3</sup>A new consideration is essential to the validity of a guaranty of a previously existing obligation. *Bank v. Ross*, 91 Wis. 320; 64 N. W. 993. Mere extension of time, or forbearance to sue the original debtor is

not a consideration which will support such a promise. *Twohy Mfg. Co. v. Ryan Co.* 94 Wis. 319; 68 N. W. 963. See also *Com. Nat. Bank v. Smith*, 107 Wis. 574; 83 N. W. 766.

ditions of said agreement on his part, and there is now due to him thereon from the defendant the sum of ..... dollars, with interest thereon from, etc.

WHEREFORE, etc.

**1104. On a guaranty of a mortgage debt, to recover deficiency.<sup>4</sup>**

I. That on or about the .... day of ....., 19.., the defendants entered into an agreement in writing with the plaintiff, under their hands and seals, of that date, in the words and figures following: [*copy of agreement*].

II. That the principal sum secured by the bond and mortgage referred to in the said agreement became due and payable on, etc., and that on or about, etc., the plaintiff commenced an action in the ..... court for the county of ..... for the foreclosure of said mortgage, the principal sum thereof, with interest, not having been paid; and such proceedings were thereupon had that, on the .... day of ....., 19.., a decree or judgment-order in said action was

<sup>4</sup>At common law a guarantor of an obligation could not be joined as defendant in an action against his principal, because he is bound by a separate contract. Bliss on Code Pleading, sec. 91. (3rd Ed.). By statute, however, in many states this rule has been changed, and he may be joined in the same action, viz:

(Wis. Stats. 1913 sec. 2609): Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, whether the action is brought upon the instrument or by a party thereto to recover against other parties liable over to him, and persons severally liable for the same demand and, without reckoning, offsets or counterclaims, in the same amount, although upon different obligations or instruments, may all or any of them be included in the same action at the option of the plaintiff. See also sec. 3156, as to deficiency judgments. *Palmer vs. Carey*, 63 Wis. 426; 21 N. W. 793.

(Ariz. R. S. 1913 sec. 407): The acceptor of a bill of exchange or any other principal obligor in any contract may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against such other party not primarily liable on such bill or other contract unless judgment shall have been previously or shall be at the same time rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided.

(Ark. Dig. of Stats. 1901 sec. 6009): Persons severally liable upon the same contract, including parties to bills of exchange, promissory notes, common orders and checks, and sureties on the same or separate instruments, may all, or any of them, or the representatives of such as may have died, be included in the same action, at the plaintiff's option. See sec. 522 as to parties to bills and notes.

made by the said court for the foreclosure of the said mortgage and sale of the premises, and that if the proceeds of such sale should be insufficient to pay the amount reported due to the plaintiff, with interest and costs, the amount of such deficiency should be specified in the report of sale therein, and W. . . . X. . . ., one of the defendants therein, should pay the same to the plaintiff.

III. That pursuant to said decree or judgment-order, the premises were duly sold on, etc., by the sheriff of, etc., for the price or sum of . . . . . dollars [and that the plaintiff became the purchaser thereof].

(Cal. C. C. P. 1906 sec. 383): Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

(Colo. Code Ann. 1911 sec. 13): Persons jointly or severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

(Idaho Rev. Codes, 1908 sec. 4106): Same as California.

(Iowa Ann. Code 1897 sec. 3465): Where two or more persons are bound by contract or by judgment, decree or statute, whether jointly only, or jointly and severally, or severally only, including the parties to negotiable paper, common orders and checks, and sureties on the same or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be brought against any or all of them.

The absolute guarantor of the payment of an obligation, being also the assignor, may be joined as defendant with the maker. Marvin vs. Adamson, 11 Iowa, 371; Tucker vs. Shiner, 24 Iowa, 334. Under a

section of the Code peculiar to Iowa, he should, like an indorser, be charged in a separate count. Tucker vs. Shiner, supra.

(Kans. Gen. Stats. 1909 sec. 5631): Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and indorsers and guarantors, may all or any of them be included in the same action, at the option of the plaintiff.

(Minn. Gen. Stats. 1913 sec. 7683): Same as California. The absolute guarantor, upon the same instrument, of the payment of a promissory note, may be joined as defendant in the same action with the maker. Hammel vs. Beardsley, 31 Minn. 314; 17 N. W. 858.

(Mo. R. S. 1909 sec. 1734): Every person who shall have a cause of action against several persons including parties to bills of exchange and promissory notes, and who shall be entitled by law to one satisfaction therefor, may bring suit thereon jointly against all or as many of the persons liable as he may think proper; and he may at his option join any executor or administrator or other persons liable in a representative character, with others originally liable.

A guarantor on a promissory note or other contract cannot be joined with the original parties in an action. Graham vs. Ringo, 67 Mo. 324; but indorsers and makers of a note may



IV. That upon said sale there occurred a deficiency of, etc., as appears by the sheriff's report of said sale, duly filed in the office of the clerk of, etc., and that thereupon, to-wit, on the . . . . day of . . . . ., 19. . ., a judgment was rendered in said court against W. . . . X. . . . in favor of the plaintiff, for the said sum of . . . . . dollars, with interest from . . . . ., 19. . ., of which no part has ever been paid.

V. That before the commencement of this action he demanded of the defendants payment of the amount of such deficiency, and at the same time tendered to them an assignment of said judgment against W. . . . X. . . ., duly executed by the plaintiff, but that the defendants refused to pay the same, and have ever since neglected and refused to pay the same, although the plaintiff has always been and still is ready and willing to deliver to said defendants an assignment of said judgment upon being paid the amount due thereon.

WHEREFORE, etc.

be sued jointly. *Maddox vs. Duncan*, 143 Mo. 613; 45 S. W. 688.

(Mont. Rev. Codes, 1907 sec. 6492): Same as California.

(Neb. R. S. 1913 sec. 42): Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

The maker and guarantor of a note are not liable upon the same obligation, so as to be sued together. *Mowrey vs. Mast*, 9 Neb. 415; 4 N. W. 69; *Ayers vs. West*, 86 Neb. 297; 125 N. W. 583. Where written guarantee constitutes indorsement also, maker and indorsers may be sued jointly in action on note. *Weitz vs. Wolfe*, 28 Neb. 500; 44 N. W. 485. Maker and several indorsers may be sued together in one action.

(N. Dak. Rev. Codes 1905 sec. 6819): Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, whether the action is brought upon

the instrument, or by a party thereto to recover against other parties liable over to him, and persons liable severally for the same debt or demand, although upon different obligations or instruments, may all, or one or more of them, be included in the same action at the option of the plaintiff.

(S. Dak. C. C. P. 1908 sec. 90): Same as North Dakota.

(Okla. Comp. Laws, 1909 sec. 5571): Same as Kansas.

(Oregon Laws 1910 sec. 37): Same as Nebraska.

In a contract of guaranty, the liability of the principal and that of the guarantor are several, and they cannot be joined as parties to the same action. *Tyler vs. T.* of T. A. & P. U., 14 Ore. 488; 13 Pac. 329; *Brown vs. Clark*, 25 Ore. 595; 37 Pac. 71; *Smith vs. Day*, 39 Ore. 539; 64 Pac. 812; 65 Pac. 1055.

(Tex. Civ. Stats. Ann. 1913 art. 1842): Same as Arizona.

(Art. 1843): The assignor, indorser, guarantor and surety upon any contract, and the drawer of any bill which has been accepted, may

**1105. On guaranty of collection of note.**

I. That on . . . . ., 19.., one E.... F.... made and delivered to plaintiff his promissory note, of which the following is a copy: [*insert copy of note*].

II. That on said day defendant, for a valuable consideration, guaranteed the collection of said note by writing thereon the following words [*insert copy of guaranty*] and delivered said note, so guaranteed, to plaintiff.

III. That said note became due and payable on . . . . ., 19.., and plaintiff on that day duly demanded payment of the said E.... F...., but he failed to pay the same, or any part thereof, of which default defendant was on . . . . ., 19.., duly notified by plaintiff.

IV. That on . . . . ., 19.., plaintiff commenced an action on said note against said E.... F.... in the . . . . . court for . . . . . county, and on . . . . ., 19.., a judgment was duly rendered therein in favor of plaintiff against said E.... F.... for . . . . . dollars, being the amount due on said note for principal and interest, and . . . . . dollars for costs and disbursements of the action.

V. That on . . . . ., 19.., plaintiff caused said judgment to be docketed in . . . . . county, in this state, in which county said E.... F.... then resided.

VI. That on . . . . ., 19.., plaintiff caused an execution thereon to be issued out of said court, against the property of

be sued without the necessity of previously, or at the same time, suing the maker, acceptor or other principal obligor, when he resides beyond the limits of the state, or in such part of the same that he cannot be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence or when he is dead, or actually or notoriously insolvent.

(Utah Comp. Laws, 1907 sec. 2918): Same as California.

The maker and the guarantor of a promissory note may be used thereon in the same action. Gagan vs. Stevens, 4 Utah 348; 9 Pac. 706; Anderson vs. Stevens, 2 Utah 538; the maker and indorser of a

note may be joined without stating separate causes of action against each. Smith vs. McEvoy, 8 Utah 58; 29 Pac. 1030.

(Wash. Rem. and Bal. Code, 1910 sec. 192): Same as Nebraska.

An indorser of a promissory note may be joined as defendant in an action against the makers. Maine vs. Johnson, 7 Wash. 321. Parties severally liable may or may not be joined. Gilmore vs. Skookum Box Factory, 20 Wash. 703; Johnson vs. Shuey, 40 Wash. 22.

(Wyo. Comp. Stats. 1910 sec. 4327): One or more of the persons severally liable on an instrument may be included in the same action thereon.

said E.... F...., directed to the sheriff of said county, and said execution was on ....., 19.., returned by said sheriff wholly unsatisfied, of which fact defendant was on ....., 19.., duly notified.

VII. That though payment thereof has been duly demanded of defendant he has paid no part thereof.

WHEREFORE plaintiff demands judgment for ..... dollars, and interest thereon at said rate, being the principal and interest due on said note; for ..... dollars, the costs of said action against the principal and interest thereon; and for the costs of this action.

### 1106. On guaranty of payment of note.

I. That on ....., 19.., one E.... F.... made and delivered to plaintiff his promissory note, of which the following is a copy: [*insert copy of note*].

II. That on said day defendant, for a valuable consideration, guaranteed the payment of said note by indorsing thereon the following words, [*insert copy of guaranty*], and delivering said note, so guaranteed, to plaintiff.

III. That said note became due on the ... day of ....., 19.., and before the commencement of this action but that the said E.... F.... has not, nor has defendant, paid the same or any part thereof, and there is now due thereon ..... dollars.

WHEREFORE, etc.

## CHAPTER XXXIII.

### COMPLAINTS ON CHARTER-PARTIES.

- |   |   |
|---|---|
| 1107. Ship owner against charterer,<br>for freight. | 1110. Shipowner against charterer<br>for not loading.       |
| 1108. The same, a shorter form.                     | 1111. The same, for demurrage.                              |
| 1109. The same, against assignee<br>of cargo.       | 1112. Charterer against shipowner<br>for abandoning voyage. |

#### 1107. Ship owner against charterer, for freight.<sup>1</sup>

I. That at . . . . ., on or about . . . . ., 19.., plaintiff and defendant agreed by charter-party that the plaintiff's ship, called . . . . ., should with all convenient speed sail to . . . . . and that the defendant should there load her with a full cargo of . . . . . or other lawful merchandise, which she should carry to . . . . . and there deliver, on payment by the defendant to the plaintiff of freight at . . . . . dollars per ton, one-half of such freight to be paid in cash on unloading and right delivery of the cargo, and the remainder by approved bills on . . . . . at . . . . months, or in cash less . . . . per cent. discount, at the defendant's option. [*Or plead the agreement by copy, thus: That on or about the . . . . day of . . . . ., 19.., the plaintiff and defendant entered into an agreement, of which a true copy is attached hereto, made part of this complaint and marked Exhibit A.*]

II. That afterwards the said ship accordingly sailed to . . . . . aforesaid, and was there loaded by the defendant with a full cargo of lawful merchandise, and the plaintiff carried the said cargo in said ship to . . . . . aforesaid, and there delivered the same to the defendant.

III. That said freight amounted in the whole to the sum of . . . . . dollars, and the defendant paid to the plaintiff one-half of said freight in cash, and all conditions were fulfilled, and all things happened, and all times elapsed which were necessary to entitle the plaintiff to maintain this action; yet the defendant did not pay to the plaintiff the

<sup>1</sup>The forms in this chapter are taken without substantial change from Abbott's Forms, vol. 1 pp. 288-291.

remainder of said freight, either by such approved bills as aforesaid, or in cash, less discount as aforesaid.

WHEREFORE, etc.

**1108. The same, a shorter form.**

I. [*As in last preceding Form.*]

II. That the plaintiff duly performed all the conditions on his part, but that no part of said freight has been paid [except the sum of, etc.]

WHEREFORE, etc.

**1109. The same, against assignee of cargo.**

I. That on or about the .... day of ....., 19.., the plaintiff and one M.... N.... agreed by charter-party [*continue as in paragraph I of preceding form, substituting the charterer's name for the word "defendant"*].

II. That thereafter the said M.... N.... assigned the cargo [or the charter-party and cargo] to the defendant, who thereupon became the owner thereof and entitled to receive the same.

III. [*Continue as in Form 1107, paragraphs II and III.*]

WHEREFORE, etc.

**1110. Shipowner against charterer for not loading.**

I. That on the .... day of ....., 19.., the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship .... at ..... on the .... day of ....., 19.., .... tons of [merchandise] which she should carry to ....., and there deliver, on payment of ..... dollars freight; and that the defendant should be allowed .... days for loading, and .... days for discharging, and .... days for demurrage, if required, at ..... dollars per day.

II. That the plaintiff duly performed all the conditions on his part, but the defendant made default in loading the agreed cargo, and failed to provide it, to the plaintiff's damage ..... dollars.

WHEREFORE, etc.



**1111. The same, for demurrage.**

I. [*As in preceding Form.*]

II. That the plaintiff duly performed all the conditions on his part.

III. That the defendant kept the said ship on demurrage . . . . days over and above the periods so agreed upon for loading and discharging as aforesaid, but has not paid the same; and that the defendant also detained the ship . . . . days beyond the periods so agreed on for loading, discharging and demurrage as aforesaid, whereby the plaintiff during all that time was deprived of the use of the ship and incurred . . . . . dollars expense in keeping the same and maintaining the crew thereof.

WHEREFORE, etc.

**1112. Charterer against shipowner for abandoning voyage.**

I. That on or about the . . . . day of . . . . ., 19.., at . . . . ., the plaintiff and defendant agreed by charter-party that the defendant's ship called . . . . then at . . . . . should with all convenient speed, having liberty to take an outward cargo for owner's benefit, sail to . . . . . or so near there as she could safely get, and there load from the plaintiff [*or the factor of the plaintiff*] a full cargo of . . . . . or other lawful merchandise, which he should carry to . . . . . and there deliver, on payment of freight, [*certain perils and casualties in the said charter-party mentioned only excepted*].

II. That the plaintiff duly performed all the conditions on his part.

III. That said ship was not prevented by any of said perils or casualties from completing said outward voyage, but that she did not with all convenient speed sail to . . . . . or so near thereto as she could safely get; and the defendant caused the said ship to deviate from her said voyage and abandon the same, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

## CHAPTER XXXIV.

### COMPLAINTS ON INSURANCE POLICIES.

- |   |   |
|---|---|
| 1113. Complaint on fire policy by owner insured.                        | 1123. By insured on accident policy.  |
| 1114. The same, by mortgagee under provision in policy issued to owner. | 1124. By personal representatives of insured upon accident policy when accident caused death. |
| 1115. Upon a fire policy renewed before the fire.                       | 1125. Upon a valued marine policy.  |
| 1116. By purchaser of property to whom policy was assigned.             | 1126. The same, on an open policy.  |
| 1117. On an agreement to insure, policy not issued.                     | 1127. Upon freight.   |
| 1118. By executor on life policy.                                       | 1128. Averment of loss by collision.  |
| 1119. By wife, partner or creditor insured.                             | 1129. Averment of waiver of a condition.  |
| 1120. By wife, on life policy issued to husband in her favor.           | 1130. For a partial loss and contribution to general average.                                 |
| 1121. By assignee in trust for wife of insured.                         | 1131. On fire policies against several companies (Wisconsin).                                 |
| 1122. On a membership certificate of a fraternal insurance order.       | 1132. Complaint on policy of insurance on live stock against disease.                         |

#### 1113. Complaint on fire policy by owner insured.

I. That the defendant is and was at the times hereinafter mentioned a . . . . insurance corporation duly organized and existing under the laws of this state for the purpose of insuring property against loss by fire [or, if a foreign corporation, duly organized and existing under the laws of the state of . . . . . for the purpose of insuring property against loss by fire, and lawfully engaged in the business of fire insurance within this state].

II. That on the . . . . day of . . . . ., 19 . . . , in consideration of the payment by the plaintiff to the defendant of the premium of . . . . . dollars, the defendant, by its agents duly authorized thereto, made its policy of insurance in writing, a copy of which is annexed and made part of this complaint, and marked Exhibit A, and thereby insured the plaintiff against loss or damage by fire to the amount of

..... dollars upon his [dwelling-house and his furniture therein] in the city of .....

III. That at the time of making said insurance [or at the time of the commencement of the risk] and from then until the fire hereinafter mentioned, the plaintiff was the owner in fee of the said property so insured.

IV. That on the .... day of ....., 19.., and while said policy was still in force, said dwelling house and furniture were totally destroyed [or damaged, and in part destroyed] by fire, which did not happen from any of the causes excepted in said policy.

V. That the said building and furniture when so destroyed [or damaged] was of the value of ..... dollars [and if the loss be partial, that the loss and damages sustained by the plaintiff by reason thereof was the sum of .....dollars].

VI. That the plaintiff duly fulfilled all the conditions of said insurance on his part [and more than sixty days, or as otherwise required by the policy, before the commencement of this action, to-wit, on the .... day of ....., 19.., gave to the defendant due notice and proof of the fire and loss aforesaid, as required by said policy].

VII. [Where appraisal is required by the policy]: That thereafter and before the commencement of this action the plaintiff's loss from said fire was duly ascertained and estimated by this plaintiff and said company at the sum of .....dollars. [Or where the appraisal has been had by a board of appraisers]: That thereafter and before the commencement of this action, the parties being unable to agree upon the amount of plaintiff's loss, two appraisers and an umpire [or three referees, or otherwise as the policy requires] were duly selected in accordance with the terms of said policy to estimate and appraise the plaintiff's said loss and that said appraisers and umpire [or referees] duly made their award in writing and found said loss to be the sum of ..... dollars, and that the plaintiff duly demanded payment of said last named sum on the .... day of ....., 19.., which payment was refused.

VIII. That plaintiff had no other insurance on said property [or that plaintiff had upon said property, in addition to said policy of defendant, insurance amounting to ..... dollars and no more].

IX. That no part of the said sum has been paid, and the same is now due from the defendant to the plaintiff.

WHEREFORE, etc.

**1114. The same, by mortgagee under provision in policy issued to owner.**

[I, II and III as in last preceding form, substituting the name of owner for the word "plaintiff" and adding to paragraph II: loss if any payable to this plaintiff as his mortgage interest may appear.]

IV. That on or about the . . . . day of . . . . ., 19.., said [owner] to secure the payment of the sum of . . . . . dollars then owing by him to this plaintiff, made and delivered to this plaintiff a mortgage upon said premises with a covenant therein to keep said premises insured against damage by fire for the benefit of this plaintiff as mortgagee aforesaid, and that said debt remains wholly unpaid, and that the same, together with said mortgage is now held and owned by this plaintiff.

[Allege loss, performance of conditions and nonpayment as in preceding form, with incidental changes necessary by reason of the fact that plaintiff is the mortgagee instead of owner.]

WHEREFORE, etc.

**1115. Upon a fire policy renewed before the fire.**

[Follow either of the foregoing Forms, and insert after paragraph III the following]:

IV. That on or about the . . . . day of . . . . ., 19.., the defendant, in consideration of . . . . . dollars to it paid by the plaintiff [or by the owner] executed and delivered to plaintiff [or owner] its certificate of renewal of said policy, a copy of which is annexed and made part of this complaint and marked Exhibit B, and thereby renewed said insurance for the term of . . . . years from said . . . . day of . . . . ., 19..

[Continue as in preceding Forms.]

**1116. By purchaser of property to whom policy was assigned.**

I, II and III. [As in first Form in this chapter, substituting name of original owner for the word "plaintiff" and changing

*allegation of ownership so as to show when original owner's title ceased.*]

IV. That on or about the . . . . day of . . . . ., 19. . ., the said [*original owner*] duly sold and conveyed to the plaintiff said property and all his right, title and interest therein, and this plaintiff continued to be the owner in fee thereof until the time of the fire hereinafter mentioned; and that on said . . . . day of . . . . ., 19. . ., the said [*original owner*] with the consent of the defendant duly indorsed in writing thereon, assigned and transferred said property to this plaintiff.

[*Allege loss and subsequent essential facts as in first Form in this chapter.*]

WHEREFORE, etc.

### 1117. On an agreement to insure, policy not issued.

I. [*Allege incorporation, etc., of defendant, as in paragraph I of first Form in this chapter.*]

II. That on the . . . . day of . . . . ., 19. . ., the plaintiff was the owner in fee of the dwelling house situate on lot . . . . in block . . . . in the city of . . . . ., and on said day applied to E. . . . F. . . . the agent of the defendant, and lawfully authorized to make the contract hereinafter set forth, for insurance against loss or damage by fire upon said dwelling-house. And on the day aforesaid, said defendant by its said agent, in consideration of the sum of . . . . . dollars then duly paid by plaintiff, agreed to insure said property against loss or damage by fire for the sum of . . . . . dollars for . . . . years from that time, and agreed to make and deliver to the plaintiff within a reasonable time, a policy of insurance for . . . . . dollars, in the usual form of such policies issued by the defendant [*or in the standard form required by the laws of the state of . . . . .*]

III. That it was expressly agreed by and between the plaintiff and defendant at the time of making said contract that said insurance should commence and be binding on the defendant from the time of the receipt of said premium, to-wit, the . . . . day of . . . . ., 19. . .

IV. That by the terms of the policies of insurance issued by the defendant in the usual form [*or by the terms of the standard policy of insurance so agreed to be issued by the defendant*] the said defendant promises and agrees [*state the*



*substance of the agreements and conditions of the proposed policy*].

V. That the defendant neglected to make or deliver to the plaintiff said policy of insurance so agreed to be issued, and that on the . . . . day of . . . . ., 19.., while said agreement to insure was in full force, said dwelling-house was entirely destroyed by fire, which fire did not occur from any of the causes excepted in said proposed policy of insurance.

VI. That the value of said building at the time said fire occurred was the sum of . . . . . dollars.

VII. That on the . . . . day of . . . . ., 19.., the plaintiff furnished to the defendant proof of his loss and interest in said building, and duly performed all the conditions of said agreement and of said proposed policy on his part to be performed.

VIII. That no part of said loss has been paid, and that defendant denies all liability to the plaintiff upon said agreement to insure, and refuses to perform on its part any of the agreements or conditions of its said agreement to insure, or of said proposed policy of insurance, and that there is now due from the defendant to the plaintiff thereon the sum of . . . . . dollars, with interest from . . . . ., 19..

WHEREFORE, etc.

### 1118. By executor on life policy.

I. [*Allege incorporation, etc., as in first Form in this chapter, with necessary changes to show that defendant is engaged in the business of life insurance*].

II. That on the . . . . day of . . . . ., 19.., in consideration of the payment by one E. . . . F. . . . to the defendant, of the premium of . . . . . dollars annually during his life, the defendant by its agents duly authorized thereto, made their policy of insurance in writing, a copy of which is annexed and made part of this complaint and marked "Exhibit A," and thereby insured the life of said E. . . . F. . . . in the sum of . . . . . dollars.

III. That on the . . . . day of . . . . ., 19.., said E. . . . F. . . . died, which death was not caused by [*the causes excepted in the policy*].

IV. That prior to his said death the said E. . . . F. . . . had duly made and executed his last will and testament, by

which the plaintiff was appointed the sole executor thereof, and that on the . . . . day of . . . . ., 19. . ., said will was duly proved and admitted to probate in the . . . . . court of the county of . . . . . and letters testamentary thereupon were thereafter duly issued and granted to the plaintiff as sole executor by the said court, and this plaintiff thereupon and before the commencement of this action duly qualified as such executor and entered upon the discharge of the duties of his said office.

V. That said E. . . . F. . . . and the plaintiff each duly fulfilled all the agreements and conditions of said policy of insurance on his part, and that this plaintiff on the . . . . day of . . . . ., 19. . ., made and delivered to the defendant due notice and proof of the death of said E. . . . F. . . . in accordance with the requirements of said policy.

VI. That no part of the same has been paid, and the said sum of . . . . . dollars, with interest from . . . . ., 19. . ., is now due thereon from the defendant to the plaintiff, as such executor.

WHEREFORE, etc.

### 1119. By wife, partner or creditor insured.

I. [*For allegation of incorporation see first Form in this chapter*].

II. That on the . . . . day of . . . . ., 19. . ., in consideration of the payment by the plaintiff to the defendant of the annual premium of . . . . . dollars, the defendant by its agents duly authorized thereto made and delivered to the plaintiff their policy of insurance upon the life of E. . . . F. . . ., a copy of which is annexed and made part of this complaint and marked "Exhibit A," and thereby insured the life of said E. . . . F. . . . in the sum of . . . . . dollars, payable to the plaintiff within sixty days after due notice and proof of the death of said E. . . . F. . . .

III. That the plaintiff was then the wife of said E. . . . F. . . . [*or the partner of said E. . . . F. . . . in the business of, etc., or a creditor of said E. . . . F. . . . to the amount of . . . . . dollars, stating facts showing his interest in the life*] and as such had a valuable interest in the life of said E. . . . F. . . .

IV. That on the .... day of ....., 19.., at ..... said E.... F.... died, which death was not caused by *[the causes excepted in the policy]*.

V. That the said E.... F.... and this plaintiff each duly performed all the conditions and agreements of said policy of insurance on their part to be performed, and that this plaintiff on the .... day of ....., 19.., made and delivered to the defendant due notice and proof of the death of the said E.... F.... in accordance with the requirements of said policy.

VI. *[As in paragraph VI of last preceding Form.]*  
WHEREFORE, etc.

**1120. By wife, on life policy issued to husband in her favor.**

I. *[Allege incorporation and business, as in first Form in this chapter.]*

II. That on the .... day of ....., 19.., the defendant, in consideration of the payment to it of a premium of ..... dollars, made and delivered to one E.... F.... its policy of insurance, and thereby insured the life of the said E.... F.... in the sum of ..... dollars, payable to plaintiff within .... days after notice and proof of the death of the said E.... F.... a copy of which policy is hereto annexed and made part of this complaint and marked Exhibit A.

III. That on the .... day of ....., 19.., in the city of ..... the said E.... F.... died.

IV. That plaintiff was the wife of the said E.... F.... at the time said policy was issued to him, and so remained at the time of his said death.

V. That up to the time of the death of the said E.... F.... all premiums which accrued on said policy were paid at the time they accrued, and that in all other respects the said E.... F.... duly performed all the agreements and conditions of said policy on his part.

VI. That on the .... day of ....., 19.., plaintiff furnished defendant with due notice and proof of the death of the said E.... F.... and in all other respects duly performed the conditions of said policy on her part.

VII. That no part of said sum has been paid by the defendant, though payment thereof has been demanded by this

plaintiff, and that there is now due and owing from the defendant to the plaintiff upon said policy the sum of ..... dollars, with interest from ....., 19..

WHEREFORE, etc.

**1121. By assignee in trust for wife of insured.**

I. [For allegation of incorporation of defendants, etc., see first Form in this chapter.]

II. That on the .... day of ....., 19.., in consideration of the payment by one E.... F.... to the defendant of the premium of ..... dollars [annually during his life] the defendant by its agents duly authorized thereto made its policy of insurance in writing, a copy of which is annexed and made part of this complaint, and marked Exhibit A, and thereby insured the life of said M.... N.... in the sum of ..... dollars, payable sixty days after due notice and proof of the death of the said E.... F....

III. That on the .... day of ....., 19.., the said E.... F.... [with the written consent of the defendant, by its said agents, duly indorsed on the policy, or otherwise state such consent as is required by the terms of the policy] duly assigned said policy of insurance to this plaintiff in trust for G.... H...., who then was the wife of said E.... F.... and remained such until the death of said E.... F.... as hereinafter stated.

IV. That up to the time of the death of E.... F.... all premiums accrued upon said policy were duly paid.

V. That on the .... day of ....., 19.., at ..... said E.... F.... died, which death was not caused by [the causes excepted in the policy].

VI. That said E.... F.... and the plaintiff each duly fulfilled all the conditions of said insurance on their part, and the plaintiff, more than sixty days [or as otherwise required by the policy] before the commencement of this action, to-wit, on the .... day of ....., 19.., gave to the defendant due notice and proof of the death of said M.... N.... as aforesaid, and duly demanded payment of the said sum of ..... dollars.

VII. That no part of the same has been paid, and the said sum is now due thereon from the defendant to the plaintiff, with interest from ....., 19..

WHEREFORE, etc.

**1122. On a membership certificate of a fraternal insurance order.**

I. That the defendant is, and was at the dates hereinafter named, a mutual benefit association or fraternal order duly incorporated under the laws of the state of . . . . . and doing the business of insuring the lives of its members upon the mutual or assessment plan, and that on the . . . . day of . . . . ., 19.., one E.... F.... was received into said association as a member thereof, and remained such member in good standing and entitled to all the privileges and benefits appertaining to his said membership until his death, as hereinafter stated.

II. That at the time said E.... F.... was so received as a member of said association said defendant duly executed and delivered to him a certain written and printed certificate bearing date the . . . . day of . . . . ., 19.., a copy of which certificate is attached hereto and made a part hereof and marked Exhibit A.

III. That the said E.... F.... during his lifetime fully complied with the requirements of the articles of association of the defendant, and with all its regulations and by-laws in force at the time of the issuance of said certificate and thereafter adopted, and performed all the agreements and conditions of said certificate on his part to be performed.

IV. That the plaintiff is the identical A.... B.... named as beneficiary, in said certificate, and that the said E.... F.... did not at any time substitute any other beneficiary in place of plaintiff in said certificate.

V. That said E.... F.... died on or about the . . . . day of . . . . ., 19.., but not from any of the causes excepted in said certificate or the by-laws of said defendant, and that this plaintiff on the . . . . day of . . . . ., 19.., and more than sixty days before the commencement of this action, made and delivered to the defendant due notice and proof of the death of the said E.... F.... and performed all the conditions of said certificate and of the by-laws of said association required to be performed on her part.

VI. Upon information and belief, that since the death of said insured there has been and still is in the treasury of defendant a sufficient sum to pay the plaintiff's claim, and all other just claims against the defendant [or that defendant



since the death of said E.... F.... has wholly refused and neglected to levy or collect any assessment upon its members to pay plaintiff's said claim, notwithstanding sufficient funds to pay the same might have been procured by such levy and collection].

VII. That no part of said sum has been paid and that plaintiff is still the holder and owner of said certificate.

WHEREFORE, etc.

### 1123. By insured on accident policy.

I. [See first Form in this chapter for allegation of incorporation, etc.]

II. That on or about the .... day of ....., 19.., in consideration of the payment by plaintiff to defendant of an annual premium of ..... dollars, defendant made and delivered to plaintiff its policy of accident insurance in writing, a copy of which policy is hereto attached, made part hereof, and marked Exhibit A.

III. That on or about the .... day of ....., 19.., while said policy was in full force plaintiff received a personal injury through external, violent and accidental means, to-wit [*describe the manner of inflicting it, as: by the accidental discharge of a gun in the hands of one X.... Y....*].

IV. That by reason of said injury plaintiff was prevented for the space of .... months from prosecuting his occupation as a .....

V. That the plaintiff duly performed all the conditions of said policy on his part to be performed and on the .... day of ....., 19.., and more than .... days before the commencement of this action gave to the defendant due notice and proof of said accident and the duration of his said disability and demanded payment of the sum of ..... dollars, which the defendant refused.

VI. That no part of said sum has been paid, and that there is now due and owing from the defendant to the plaintiff the sum of ..... dollars, with interest from the .... day of ....., 19..

WHEREFORE, etc.

**1124. By personal representatives of insured upon accident policy when accident caused death.**

I, II and III. [*As in last preceding Form, substituting the name of the insured for the word "plaintiff."*]

IV. That by reason of said injury, and as the direct result thereof, the said insured died on or about the . . . . day of . . . . ., 19.., a resident of the county of . . . . ., state of . . . . ., and that thereafter and on or about the . . . . day of . . . . ., 19.., this plaintiff, upon proceedings duly had, was by order of the . . . . . court of . . . . . county, state of . . . . ., duly appointed administrator of the estate of said deceased, and duly gave bond and qualified as such, and is now such administrator duly qualified and acting.

V. and VI. [*As in last preceding form, changing paragraph V so that it alleges that both the plaintiff and the insured duly performed all the conditions of the policy.*]

WHEREFORE, etc.

**1125. Upon a valued marine policy.**

I. [*Allege incorporation, etc., as in first Form in this chapter.*]

II. That on the . . . . day of . . . . ., 19.., in consideration of the premium of . . . . . dollars, then and there paid to them by the plaintiff [*or which this plaintiff then and there agreed and became liable to pay to the defendant*] the defendant, by its agent duly authorized thereto, made its policy of insurance in writing, of which a copy is annexed and made part of his complaint, and marked Exhibit A \* and thereby insured for him . . . . . dollars upon the ship . . . . [*or upon the cargo, or certain goods then laden, or about to be laden upon the ship . . . .*] then lying in the harbor of, etc. [*or as the case was*] for a voyage from . . . . . to . . . . . against the perils of the seas [*or the perils of fire, mentioning the perils which occasioned the loss*] and other perils in the policy mentioned.

III. That on the . . . . day of . . . . ., 19.., the said ship sailed from said . . . . . on the voyage described in the policy, and while proceeding therein [*or during said voyage and while lying in the port of, etc.*], was by the perils of the seas wrecked and totally lost [*or was burned and wholly destroyed by fire*].

IV. That the plaintiff was at the time of the commencement of the risk and thereafter until the said loss, the owner of said [*insured property, or interested in said insured property*] to an amount exceeding [*the whole amount insured*] to-wit, . . . . . dollars.

V. That the plaintiff duly fulfilled all the conditions of said policy of insurance on his part [and more than sixty days, *or as otherwise required by the policy*, before the commencement of this action, to-wit, on the . . . . day of . . . . ., 19.., at . . . . . he gave to the defendants due notice and proof of the loss as aforesaid, and duly demanded payment of said sum of . . . . . dollars].

VI. That no part of the same has been paid, and there is now due from the defendants to the plaintiff thereon the sum of . . . . . dollars, with interest from, etc.

WHEREFORE, etc.

#### 1126. The same, on an open policy.

[*As in preceding Form, substituting in paragraph II at the \**]: and thereby promised to pay to the plaintiff within . . . . days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury to the ship . . . . [*or of the cargo, or, certain goods, then laden, or about to be laden upon the ship . . . .*] then at . . . . . during its next voyage from . . . . . to . . . . . whether by perils of the sea or of fire [*mentioning the perils which occasioned the loss*] or by other causes therein mentioned, not exceeding . . . . . dollars. [*If the policy provides that the company shall only be liable for such sums as shall be mutually agreed upon and endorsed upon the policy, that fact should be alleged also.*]

#### 1127. Upon freight.

[*As in Form 1125, substituting at the \* in paragraph II the following*]: and thereby insured for him . . . . . dollars upon freight of certain goods then laden [*or about to be laden*] in the ship . . . . ., then at . . . . ., to be transported by the plaintiff from . . . . . to . . . . . against the perils of the seas [*or the perils of fire, mentioning the perils which occasioned the loss*] and other perils in the policy mentioned.

III. That on the .... day of ....., 19.., said ship sailed from ..... on the voyage described in the policy, and while proceeding thereon [*or during said voyage, and while lying in the port of, etc.*] said goods, the freight whereof was insured, were lost by [*the perils of the sea*].

IV. That the plaintiff has not received any freight upon said goods, nor was any earned thereon by reason of [*such loss of the vessel*]. [*Or, where the freight was paid in advance: That the plaintiff thereupon became liable to repay (and on the .... day of ....., 19.., at ..... did repay) to the shippers of said goods, the sum of ..... dollars, freight which had been advanced by them.*]

V. and VI. [*As in Form 1125.*]

WHEREFORE, etc.

#### 1128. Averment of loss by collision.

[*Substitute for paragraph III in preceding Forms:*]

III. That on or about the .... day of ....., 19.., while the said ship or vessel in said policy named [*with the said goods on board*] was proceeding on her said voyage, and before her arrival at her said port of destination in the said policy mentioned, another vessel, with great force and violence was carried against and ran foul of the said ship, and the said ship was thereby sunk and lost [*with the said goods, which thereby were wholly lost to the plaintiff*].

#### 1129. Averment of waiver of a condition.

That afterwards [*and on the .... day of ....., 19.., at .....*] the defendant, by its agents duly authorized thereto, waived the condition of the said policy by which [*designating it*] and released and discharged the plaintiffs from the performance thereof [*or and consented that the plaintiffs should, etc., according to the facts*].

#### 1130. For a partial loss and contribution to general average.

[*I and II as in preceding Forms.*]

III. That said ship did, on the .... day of ....., 19.., sail on said voyage, and whilst proceeding thereon was by the perils of the seas dismasted and otherwise damaged in her

hull, rigging, and appurtenances; insomuch that it was necessary for the preservation of said ship and her cargo, to throw over a part of said cargo, and the same was accordingly thrown over for that purpose.

IV. That by means thereof the plaintiff was obliged to expend . . . . . dollars in repairing said ship at . . . . .; and, also [or and is also liable to pay] . . . . . dollars as a contribution to and for the loss occasioned by throwing over a part of said cargo.

V. That said ship also suffered much damage that was not repaired at . . . . . to-wit, to the amount of . . . . . dollars.

[Continue as V and VI in Form 1125.]

**1131. On fire policies against several companies (Wis. Stats. 1913 sec. 2609a).**

I. [*Allege incorporation of each company separately as in the first Form in this chapter.*]

II. [*Allege the issuance by each company of its policy as in the first Form in this chapter.*]

III. That each of said policies expressly permitted concurrent insurance on said property.

IV, V, VI and VII. [*As in III, IV, V and VI in first Form in this chapter making such changes as are necessary to show that notice was given to each defendant.*]

VIII. That no part of said loss has been paid.

IX. That each of the defendants claims that it is liable for said loss, if at all, only for such proportion of said loss as the amount of its policy bears to the whole amount of insurance on said property at the time of said loss.

WHEREFORE plaintiff demands judgment adjudging the total amount of said loss and the proportionate liability of each defendant therefor, and that plaintiff have judgment against each of the defendants for its proportionate share, with costs.

**1132. Complaint on policy of insurance on live stock against disease.**

I. [*Allege incorporation of defendant as in first Form in this chapter.*]

II. That on . . . . ., 19.., defendant, in consideration of



a premium then paid of ..... dollars, made and delivered to plaintiff its policy of insurance, whereby it insured plaintiff to the amount of ..... dollars against loss by death caused by disease of [*describe or name stock*] the property of plaintiff, for one year from that date.

III. That on ....., 19.., while said policy was in full force, said [*name animal*] died from disease.

IV. That on ....., 19.., immediately upon discovering that said [*name animal*] was affected with the disease which caused its death, plaintiff employed E.... F...., a competent and duly licensed veterinary surgeon, to attend and attempt to cure it, and duly gave immediate notice in writing to the secretary of defendant at its home office in the city of ....., of the fact of such sickness. [*Allege facts showing that the notice conformed to the requirements of the policy.*]

V. That at the time of its death the [*name animal*] was still the property of plaintiff and of the value of ..... dollars.

VI. That plaintiff duly performed all the conditions of said policy on his part, and on ....., 19.., and more than .... days before this action was brought, duly [*allege notice and proof of loss according to the terms of the policy*].

VII. That plaintiff's loss from said death was ..... dollars, no part of which has been paid by defendant, though duly demanded prior to this action.

WHEREFORE, etc.

## CHAPTER XXXV.

### COMPLAINTS ON LEASES.

- |   |   |
|---|---|
| 1333. Lessor against lessee.                        | 1138. Assignee of rent against lessee.  |
| 1134. The same, after re-entry for covenant broken. | 1139. Heir of reversioner against lessee.   |
| 1135. Lessor against assignee of lease.             | 1140. Assignee of devisee of reversion and rent against assignee of part of the premises. |
| 1136. Lessor against executors of lessee.           |   |
| 1137. Grantee of lessor against lessee.             |   |

#### 1133. Lessor against lessee.

I. That heretofore the plaintiff, by an agreement in writing made between him and the defendant, bearing date the . . . . day of . . . . ., 19. . ., demised and leased to the defendant certain premises therein mentioned [*or very briefly designate them*] at the yearly rent of . . . . . dollars, and that the defendant thereby covenanted to pay said rent quarterly on the first day of, etc., in each year. [*Or plead the agreement by copy, as follows: That heretofore plaintiff and defendant entered into a certain agreement or lease in writing, of which a copy is hereto attached and made part hereof marked Exhibit A.*]

II. That the plaintiff has duly performed all the conditions of said agreement on his part.

III. That defendant has not paid the rent accruing under said lease for the [quarter] ending on the . . . . day of . . . . ., 19. . ., amounting to . . . . . dollars.

WHEREFORE, etc.

#### 1134. The same, after re-entry for covenant broken.

I. That heretofore the plaintiff, by an agreement in writing made between him and the defendant, bearing date the . . . . day of . . . . ., 19. . ., demised and leased to the defendant certain premises therein mentioned [*or very briefly designate them*] at the yearly rent of . . . . . dollars, payable

quarterly on, etc.; and further covenanted with the plaintiff that he would not [*here state special covenant*] and that in case of any breach on his part of said covenant the plaintiff reserved full power, which was thereby acceded to by the defendant, to re-enter said premises and eject the occupants thereof, and relet the same for the benefit of the defendant.

II. That the defendant, contrary to his covenant [*here state the breach*] and that the plaintiff for that cause re-entered the premises and took possession thereof by virtue of the authority given herein in the lease, and as agent of the defendant, and not otherwise, and that he made diligent efforts to relet the premises for the defendant, but was unable to do so.

III. That thereby the plaintiff lost the sum of ..... dollars rent, which would have been payable to him on, etc.  
WHEREFORE, etc.

### 1135. Lessor against assignee of lease.

I. That on the .... day of ....., 19.., by a lease in writing then made between this plaintiff and one M.... N...., under the hand and seal of said M.... N.... [of which a copy is annexed as part of this complaint] this plaintiff leased to said M.... N.... certain lands [*or very briefly designate them*] to have and to hold to said M.... N.... and his assigns, from the .... day of ....., 19.., for the term of ..... then next ensuing, for the yearly rent of ..... dollars, payable to this plaintiff on the [*state days of payment*] which rent said M.... N.... did thereby for himself and his assigns covenant to pay to the plaintiff accordingly.

II. That by virtue thereof said M.... N.... on the .... day of ....., 19.., entered into the demised premises and was possessed thereof.

III. That thereafter and during said term, to-wit, on the .... day of ....., 19.. [*naming a day before the breach*] all the estate and interest of said M.... N.... in said term, by an assignment then by him made, became vested in the defendant, who thereupon entered into the demised premises and became possessed thereof [and continued so possessed from thence hitherto, or, until, etc.]

IV. That during the time the defendant was so possessed of the premises, to-wit, on the . . . . day of . . . . ., 19. . . , the sum of . . . . . dollars of said rent, for the quarter ending on that day [or otherwise] became due to the plaintiff from the defendant, but no part thereof has been paid.

WHEREFORE, etc.

### 1136. Lessor against executors of lessee.<sup>1</sup>

I. That on the . . . . day of . . . . ., 19. . . , by a lease in writing then made between the plaintiff and one M. . . . N. . . . under the hand and seal of said M. . . . N. . . . [of which a copy is annexed as part of this complaint, marked Exhibit A] the plaintiff leased to said M. . . . N. . . . certain lands [or very briefly designate them] to have and to hold to said M. . . . N. . . . and his executors, administrators and assigns, from the . . . . day of . . . . ., 19. . . , for the term of . . . . . then next ensuing, for the yearly rent of . . . . . dollars, payable to this plaintiff on the [state days of payment] which rent said M. . . . N. . . . did thereby for himself and his executors, administrators and assigns, covenant to pay to the plaintiff accordingly.

II. That by virtue thereof said M. . . . N. . . . on the . . . . day of . . . . ., 19. . . , entered into the demised premises and was possessed thereof.

III. That thereafter and during said term said M. . . . N. . . . died, to-wit, on the . . . . day of . . . . ., 19. . . , leaving a will appointing the defendants his executors.

IV. That the defendants, by an order or determination of the . . . . . court of the county of . . . . . duly made on the . . . . day of . . . . ., 19. . . , were appointed, and now are, the executors of his said will, duly qualified and acting as such.

V. That as such executors the defendants took possession of and occupied the premises under said lease.

VI. That the sum of . . . . . dollars of said rent for the quarter ending on [a day before the lessee's death] became due

<sup>1</sup>This form is taken from Abbott's Forms, Vol. I, Form No. 401, and is supported by Pugsley v. Aiken, 11 N. Y. 494, which holds that it does not combine distinct causes of action. Under statutes requiring presentation of all claims

against deceased persons to the probate court, and prohibiting the commencement of actions against personal representatives, such as prevail in most of the states, this form could not be used.

on said day to the plaintiff from said M.... N.... but no part thereof has been paid.

VII. For a further breach the plaintiff alleges that after the death of said M.... N.... and while defendants were so in possession, the sum of ..... dollars of said rent for the quarter ending on, etc., on that day became due to the plaintiff from the defendants, but no part thereof has been paid.

### 1137. Grantee of lessor against lessee.

I. That one M.... N.... being the owner in fee of certain premises [*or very briefly designate them*] did, on the .... day of ....., 19.., by a lease in writing then made between him and the defendant, under the hand and seal of the defendant [a copy of which is annexed as part of this complaint, marked Exhibit A] lease to the defendant said premises from the .... day of ....., 19.., for the term of ..... then next ensuing, for the yearly rent of ..... dollars, payable to said M.... N.... his heirs and assigns, on the [*state days of payment*] which rent the defendant did thereby covenant to pay to said M.... N.... his heirs and assigns, accordingly.

II. That by virtue thereof the defendant entered into the demised premises and was possessed thereof.

III. That thereafter and on the .... day of ....., 19.., said M.... N.... by his deed, under his hand and seal, [*a copy of which is hereto annexed*] sold and conveyed to this plaintiff the demised premises [of which the defendant had due notice.]

IV. That thereafter, to-wit, on the .... day of ....., 19.., the sum of ..... dollars of said rent, for the quarter ending on that day [*or otherwise*] became due to the plaintiff from the defendant; but no part thereof has been paid.

WHEREFORE, etc.

### 1138. Assignee of rent against lessee.

[*I and II as in last preceding Form.*]

III. That thereafter, and on the .... day of ....., 19.., said M.... N.... duly assigned to the plaintiff said covenant and all his right to the rent therein secured.

IV. [*As in last preceding Form.*]

WHEREFORE, etc.



**1139. Heir of reversioner against lessee.**

I. That one M.... N...., now deceased, being in his lifetime, the owner in fee of the tenements hereinafter mentioned, on, etc. [*state the lease, and the covenants which were broken as in the preceding Forms*].

II. That the said M.... N.... being seized of the reversion in said demised premises, afterwards, and during the said term, on etc., died so seized; whereupon the said reversion then descended to the plaintiff as his [son and only child and] heir; and thereby the plaintiff then became seized thereof in fee.

III. That thereafter, to-wit, on, etc., the sum of ..... dollars of said rent, for the quarter ending on that day [*or otherwise*] became due to the plaintiff from the defendant, but no part thereof has been paid.

WHEREFORE, etc.

**1140. Assignee of devisee of reversion and rent against assignee of part of the premises.**

I. That one M.... N.... being the owner in fee of certain premises [*or very briefly designate them*] on the .... day of ....., 19.., by lease in writing then made between him and one O.... P.... under the hand and seal of said O.... P.... [a copy of which is annexed as part of this complaint] leased to said O.... P.... said premises from the .... day of ....., 19.., for the term of .... then next ensuing, for the yearly rent of ..... dollars, payable to said M.... N.... his heirs and assigns, accordingly.

II. That by virtue thereof the defendant entered into the demised premises and was possessed thereof.

III. That thereafter and during said term, to-wit, on the .... day of ....., 19.., [*naming a day before the breach*] said O.... P.... duly assigned all his interest in a divided part of the land, equal in value to the residue of the demised premises, and thereby the defendant became tenant of such part.

IV. That on the .... day of ....., 19.., said M.... N.... died, having by his last will and testament devised the [reversion and] rent to one Q.... R.... which said will was duly proved and recorded as a will of real estate before the surrogate of the county of ..... on, etc.

V. That Q.... R.... on the .... day of ....., 19..., duly [conveyed and] assigned said [reversion and] rent to the plaintiff.

VI. That thereafter, to-wit, on the .... day of ....., 19. ., the sum of ..... dollars of said rent, for the quarter ending on that day [*or otherwise*] became due to the plaintiff from the defendant, but no part thereof has been paid.

WHEREFORE, etc.

## CHAPTER XXXVI.

### COMPLAINTS ON NON-NEGOTIABLE NOTES OR CONTRACTS.

- |  |  |
|--|--|
| 1141. Complaint on note payable only in case the maker's business exceeds a certain sum. | delivered at a certain time and place.   |
| 1142. Complaint on a note payable in chattels on demand.                                 | 1144. Complaint on note payable on condition.                                    |
| 1143. The same, chattels to be   | 1145. Complaint on accepted order payable on condition out of a particular fund. |

#### 1141. Complaint on note payable only in case the maker's business exceeds a certain sum.

I. That on the .... day of ....., 19.., at ....., the defendant [for value received, *or*, in consideration of, etc.] made and delivered to the plaintiff his promissory note in writing, of which the following is a copy:

"\$100.00 ..... , ..... , 19..

For value received, I promise to pay to A.... B.... one year after date, one hundred dollars, in case the proceeds of the laundry business I have this day bought of him shall exceed the sum of two thousand dollars within said year.

[Signed] C.... D...."

II. That the proceeds of said laundry business did, before the expiration of said year, exceed the sum of two thousand dollars [of which the defendant, on the .... day of ....., 19.., at ....., had due notice, and payment of said note was then and there duly demanded].

III. That no part of said note has been paid [except, etc.], and there is now due to this plaintiff thereon, from the defendant, the sum of ..... dollars, with interest from, etc.

WHEREFORE, etc.

#### 1142. Complaint on a note payable in chattels on demand.

I. That on the .... day of ....., 19.., at ..... the defendant, for value received [*or, when the consideration is described in the note:* for a valuable consideration therein expressed; *or, where no consideration is mentioned:* for and in consideration of, etc., *stating the real consideration, whatever*

*it may have been*], made and delivered to the plaintiff his promissory note or agreement in writing, of which the following is a copy [*here insert copy of note*].

II. That the plaintiff thereafter duly performed all the conditions of the said agreement on his part, and on the . . . . day of . . . . ., 19.., at . . . . . demanded of the defendant payment of said note and delivery of the said [*name property to be delivered*] but that said demand was refused.<sup>1</sup>

III. That no part thereof has been paid [except, etc.]  
WHEREFORE, etc.

#### 1143. The same, chattels to be delivered at a certain time and place.

I. That on the . . . . day of . . . . ., 19.., the defendant made and delivered to plaintiff his promissory note or agreement in writing, of which the following is a copy:

“\$100.00 . . . . ., . . . . ., 19..

Six months after date, for value received, I promise to pay to A. . . . B. . . . one hundred dollars in potatoes, at twenty-five cents per bushel, to be delivered at his store in . . . . .

[Signed] C. . . . D. . . .”

II. That plaintiff was ready to receive said potatoes at said time and place named in said agreement, and has at all times been ready to receive the same since the said time.

III. That defendant has not delivered said potatoes or any part thereof, and has not paid said sum or any part thereof, and there is now due plaintiff from defendant on said note the sum of . . . . . dollars, with interest from the . . . . day of . . . . ., 19..

WHEREFORE, etc.

#### 1144. Complaint on note payable on condition.

I. That on the . . . . day of . . . . ., 19.., the defendant made and delivered to plaintiff a promissory note in writing, of which the following is a copy:

“\$500.00 . . . . ., . . . . ., 19..

<sup>1</sup>If the note be payable on demand, or if it specifies no time or place for delivery of the chattels, demand should be alleged and proven. So also, if any act, such as the selection of the articles, is to be

performed by the promisee, it should be alleged as in this form that the plaintiff has performed all the conditions of the note or agreement on his part.

One year after date, for value received, I promise to pay to A.... B.... five hundred dollars, provided [*insert condition*].

[Signed] C.... D....”

II. That on the .... day of ....., 19.., and within one year from the date of said note, plaintiff did [*here allege performance of condition*].

III. That no part of said note has been paid, and there is due from the defendant to the plaintiff thereon the sum of ..... dollars, with interest from the .... day of ....., 19..

WHEREFORE, etc.

#### 1145. Complaint on accepted order payable on condition out of a particular fund.

I. That on or about the .... day of ....., 19.., one L.... M.... made and delivered to the plaintiff, for a valuable consideration then paid by plaintiff, an instrument in writing, of which the following is a copy [*here insert copy of order, as for instance*]:

“\$100.00 ..... , ..... , 19..

Please pay A.... B...., or order, one hundred dollars out of the last payment due from you to me upon that certain building contract now in force between us, and charge the same to my account.

[Signed] L.... M....”

II. That on or about the .... day of ....., 19.., the defendant, on presentation of the said order, accepted the same and promised to pay the said sum therein named to the plaintiff as by said order provided.

III. That the last payment from the said C.... D.... to the said L.... M.... upon the building contract named in said order became due on or about the .... day of ....., 19.., and is still due and amounts to more than the said sum of one hundred dollars.

IV. That prior to the commencement of this action plaintiff demanded of said defendant payment of the said sum of one hundred dollars upon the said order, but that said defendant refused and still refuses to pay the said sum or any part thereof, and no part of the same has been paid.

WHEREFORE, etc.



## CHAPTER XXXVII.

### COMPLAINTS ON CONTRACTS OF SUBSCRIPTION.

- |   |  |  |
|---|--|--|
| 1146. Complaint on subscription to build a church or other public building. |  | the building of a mill.                                  |
| 1147. Complaint on a subscription to a bonus fund to secure                 |  | 1148. On a stock subscription made before incorporation. |
|   |  | 1149. On stock subscription made after incorporation.    |

#### 1146. Complaint on subscription to build a church or other public building.

I. That on the . . . day of . . . . ., 19. . ., the plaintiff was and now is a corporation duly organized under the laws of the state of . . . . . for the purpose of [*state purposes of corporation*].

II. That the plaintiff, in the year . . . . was erecting [*or about to erect*] a building at . . . . . for the purpose of use as a church [*or other purpose*].

III. That the defendant, to enable the plaintiff to complete said building, and in consideration of the like agreement and subscriptions of other parties, subscribed and promised in writing to pay the plaintiff the sum of . . . . . dollars for that purpose [*or attach copy of subscription agreement*].

IV. That relying upon said subscription of the defendant, the plaintiff let the contract for the completion of said building, and completed the same, and thereby expended the sum of . . . . . dollars and incurred liabilities to the amount of . . . . . dollars, and has duly performed all the conditions thereof on its part to be performed.

V. No part of the defendant's subscription has been paid, although demand therefor was duly made before the action, and there is now due from the defendant to the plaintiff thereon the sum of . . . . . dollars.

#### 1147. Complaint on a subscription to a bonus fund to secure the building of a mill (Adapted from Superior C. L. Co. v. Bickford, 93 Wis. 220; 67 N. W. 45).

I. That on the . . . day of . . . . ., 19. . ., the C. . . . D. . . company was and still is a corporation duly authorized and

existing under the laws of the state of . . . . . for the purpose of manufacturing and selling flour [*or otherwise state objects of corporation*] and duly authorized to make the contracts and agreements hereinafter set forth.

II. That on said date the said C. . . . D. . . . company offered and proposed to the plaintiff and certain other citizens of the city of Superior that if there should be subscribed and paid to it by the said plaintiff and others a bonus or fund of fifty thousand dollars on or before . . . . ., 19. . . , the said company would erect or cause to be erected at or near . . . . . in the city of . . . . . a flouring mill of the capacity of . . . . . barrels per day [*or state fully offer according to the facts*].

III. That thereafter the plaintiff duly accepted said proposition and proceeded to obtain subscriptions to pay said bonus, and that the defendant on the . . . . day of . . . . ., 19. . . , for the purpose of assisting in the raising of said bonus fund and procuring the erection of said mill in writing subscribed and agreed to pay to the said C. . . . D. . . . company toward said bonus the sum of . . . . . dollars, and that on and prior to the . . . . day of . . . . ., 19. . . , the entire amount of said bonus fund was duly subscribed by solvent subscribers, and that defendant's said subscription formed a part thereof.

IV. That the said written subscriptions so made were duly delivered to the said C. . . . D. . . . company and that thereupon and in reliance upon said subscriptions the said C. . . . D. . . . company proceeded to erect said mill at the place and of the capacity required by its said offer and fully complied with the terms of its said offer, and said mill was fully completed on and before the . . . . day of . . . . ., 19. . .

V. That said sum of . . . . . dollars became due to the said C. . . . D. . . . company on the . . . . day of . . . . ., 19. . . , and that on said day the said company duly demanded payment by the defendant of said sum of . . . . . dollars, but the payment thereof was refused and the same remains wholly due and unpaid.

VI. That on the . . . . day of . . . . ., 19. . . , the said C. . . . D. . . . company for value sold and assigned in writing to this plaintiff its said claim against the defendant, and said claim is now owned by this plaintiff.

WHEREFORE, etc.

**1148. On stock subscription made before incorporation.**

I. That the plaintiff is a corporation duly organized under the laws of ..... and incorporated for the purpose of [*state purpose*].

II. That prior to and in contemplation of the said incorporation of plaintiff the defendant on or about the .... day of ....., 19.., subscribed and agreed to take and pay for .... shares of capital stock in the said corporation when duly formed, at the par value of ..... dollars per share, which said subscription agreement was in writing and a copy thereof is hereto attached and marked Exhibit A.

III. That relying upon the said subscription so made by the defendant a large number of other persons subscribed for and agreed to take and pay for .... shares of capital stock in the plaintiff corporation and the plaintiff was thereafter duly organized and incorporated.

IV. That the plaintiff, by resolution of its directors at a regular meeting thereof held on or about the .... day of ....., 19.., duly required the defendant to pay to the treasurer of plaintiff within .... days after notice of said resolution the sum of ..... dollars so subscribed by the defendant for capital stock of the plaintiff.

V. That plaintiff on or about the .... day of ....., 19.., duly notified the defendant of the passage of said resolution and demanded payment of said subscription, but that no part of said sum of ..... dollars has been paid by the defendant.

WHEREFORE, etc.

**1149. On stock subscription made after incorporation.**

I. [*Allege incorporation of plaintiff as in last preceding Form*]. That by plaintiff's articles of incorporation it was and is provided that its capital stock should consist of .... shares of the par value of ..... dollars each.

II. That on or about the .... day of ....., 19.., the board of directors of plaintiff, at a regular meeting thereof, opened books of subscription to such capital stock, and thereupon, upon said day the defendant duly subscribed and agreed to take .... shares of plaintiff's capital stock [payable on or before the .... day of ....., 19..] and then and

there paid to plaintiff the sum of ..... dollars, being .... per cent of his said subscription.

III. [*If subscription fixed no time for payment add*]: That thereafter, and on or about the .... day of ....., 19.., at a regularly called meeting of the board of directors of plaintiff, at which a majority thereof were present, the following resolution was adopted [*insert copy of resolution calling for payment*].

IV. That plaintiff has duly performed all the conditions on its part, and on or about the .... day of ....., 19.., gave defendant due notice of the passage of said resolution, and demanded payment as in said resolution provided, but that defendant has paid no part of said sum and more than .... days have elapsed since said notice and demand were given.

WHEREFORE, etc.

## CHAPTER XXXVIII.

### COMPLAINTS IN ACTIONS ON JUDGMENTS.

- |   |   |
|---|---|
| 1150. General form, upon domestic judgment.                               | ment for alimony in a divorce action.   |
| 1151. The same, by an assignee.   | 1155. Complaint on judgment of justice of the peace in an action brought within five years after its rendition. |
| 1152. Complaint on a foreign judgment of a court of general jurisdiction. | 1156. Complaint by assignee on judgment in federal court in an action commenced in state court.                 |
| 1153. Complaint on a foreign judgment of an inferior tribunal.            |   |
| 1154. Complaint on a foreign judgment                                     |   |

#### 1150. General form, upon domestic judgment.<sup>1</sup>

I. That on the . . . . day of . . . . ., 19. . . , at . . . . . in the . . . . . court of . . . . . county, [or before M. . . . N. . . . a justice of the peace in and for the town of, etc.] the plaintiff recovered a judgment, which was duly given by said court [or justice] against the defendant, for . . . . . dollars, in an action wherein this plaintiff was plaintiff [or defendant], and the defendant herein was defendant [or plaintiff].

II. That no part thereof has been paid [except, etc.]  
WHEREFORE, etc.

<sup>1</sup>In most, if not all, of the code states it is not necessary to state the facts which show that the court rendering the judgment had jurisdiction and authority over the subject matter and person, but it is sufficient to state generally that such judgment was duly given or made. Wis. Stats. 1913 sec. 2673; Ariz. R. S. 1913 sec. 430; Ark. Dig. of Stats. 1904 sec. 6132; Cal. C. C. P. 1906 sec. 456 (any court, officer or board); Colo. Code Ann. 1911 sec. 71; Idaho Rev. Codes 1908 sec. 4211 (any court officer or board); Iowa Ann. Code 1897 sec. 3625; Kans. Gen. Stats. 1909 sec. 5716; Mont. Rev. Codes 1907 sec. 6571; Minn. Gen. Stats. 1913 sec. 7772;

Mo. R. S. 1909 sec. 1836; Neb. R. S. 1913 sec. 7695; N. Dak. Rev. Codes 1905 sec. 6871; S. Dak. C. C. P. 1908 sec. 138; Okla. Comp. Laws 1909 sec. 5661; Oregon Laws 1910 sec. 87; Utah Comp. Laws 1907 sec. 2990; Wash. Rem. and Bal. Code 1910 sec. 287; Wyo. Comp. Stats. 1910 sec. 4410. Under these provisions this form will generally be found entirely sufficient as to any domestic judgment whether rendered in a court of general or limited jurisdiction. In *Archer vs. Romaine*, 14 Wis. 375, it was held that the section referred to in this note applies to judgments in courts of special jurisdiction in other states as well as to domestic judgments. While



**1151. The same, by an assignee.**

I. That on the . . . . day of . . . . ., 19.., at . . . . . in the . . . . . court of . . . . . county [or before M. . . . N. . . . a justice of the peace in and for the town of, etc.] one O. . . . P. . . . recovered a judgment which was duly given by said court [or justice] against the defendant, for . . . . . dollars, in an action wherein the said O. . . . P. . . . was plaintiff, and the defendant the defendant [or otherwise, as the case was].

II. That thereafter [or, on the . . . . day of . . . . ., 19.., at . . . . .] said M. . . . N. . . . duly assigned said judgment to this plaintiff [of which the defendant had due notice].

III. That no part thereof has been paid [except, etc.]

WHEREFORE, etc.

**1152. Complaint on a foreign judgment of a court of general jurisdiction.<sup>2</sup>**

I. That at the times hereinafter mentioned the circuit court of the county of . . . . . of the state of . . . . . was a court of general jurisdiction, duly created by the laws of that state.

II. That on or about the . . . . day of . . . . ., 19.., the plaintiff commenced an action in said court against the defendant by the issue of summons [or other process] which summons was duly and personally served on the defendant [or in which action the defendant voluntarily and duly appeared in person, or by attorney].

III. That such proceedings were thereupon had, that on

this case has not been overruled, it does not seem to agree with the reasoning in *Jarvis vs. Robinson*, 21 Wis. 523, and it would undoubtedly be safer, in case of suit upon a foreign judgment rendered by a justice of the peace or other judicial tribunal of limited jurisdiction, to allege the facts showing the jurisdiction, as in later forms in this chapter.

In some of the code states there are provisions requiring leave of the court to be obtained prior to the bringing of an action upon a domestic judgment rendered by a court of record. Wis. Stats. 1913 sec. 2916; Iowa Ann. Code 1897 sec. 3439;

Minn. Gen. Stats. 1913 sec. 7979; N. Dak. Rev. Codes 1905 sec. 6768; S. Dak. C. C. P. 1908 sec. 37. Where such leave is required it is necessary to state in the complaint the fact that leave was obtained. *Farish vs. Austin*, 25 Hun. 430; *Watts vs. Everett*, 47 Iowa, 269.

<sup>2</sup>This form may be used where the title of the foreign court is not such as to indicate that it is a court of general jurisdiction. If, however, the title of the court is one indicating general jurisdiction, such as circuit court, it is unnecessary to allege jurisdictional facts. *Kunze vs. Kunze*, 94 Wis. 54; 70 N. W. 162.

the .... day of ....., 19.., in said action the plaintiff recovered judgment, which was duly given by said court against the defendant, for the sum of ..... dollars.

IV. That no part thereof has been paid [except, etc.]  
WHEREFORE, etc.

**1153. Complaint on a foreign judgment of an inferior tribunal.**

I. That at the times hereinafter mentioned M.... N.... was a justice of the peace in and for the town of ..... in the county of ..... and state of ....., having authority under and by virtue of an act of said state, entitled [*give title of act*] passed on the .... day of ....., 19.., to hold court, and having jurisdiction as such over actions of [*state the jurisdiction sufficiently to make it appear that it included the cause in question*].

II. That on the .... day of ....., 19.., at ..... aforesaid, the plaintiff commenced an action against the defendant before the said justice, by summons [*or other process*] duly issued by said justice on that day, for the recovery of [*here designate the cause of action sufficiently to show it to be within the jurisdiction*], which summons was duly and personally served on the defendant [*or, in which action the defendant voluntarily and duly appeared*].

III. That such proceedings were thereupon had, that on the .... day of ....., 19.., in said action the plaintiff recovered judgment, which was duly given by said justice against the defendant, for the sum of ..... dollars, to-wit, ..... dollars for said debt, [*or damages*] and ..... dollars costs.

IV. That no part thereof has been paid [except, etc.]  
WHEREFORE, etc.

**1154. Complaint on a foreign judgment for alimony in a divorce action (Adapted from *Kunze v. Kunze* 94 Wis. 54; 70 N. W. 162).**

I. That at the time hereinafter mentioned the circuit court in and for the county of Cook, in the state of Illinois, was a court of general jurisdiction over matters in equity and law, duly created and organized by the laws of that state.

II. That on the .... day of ....., 19.., the plaintiff

commenced an action for divorce in said court against the defendant; that said defendant was duly served with process therein and on the . . . . day of . . . . ., 19.., appeared in said action and submitted himself personally to the jurisdiction of the court.

III. That thereafter such proceedings were had therein in said court that on the . . . . day of . . . . ., 19.., a decree was duly made, entered, enrolled and docketed in said court dissolving the bonds of matrimony between this plaintiff and said defendant, and thereafter, on the . . . . day of . . . . . 19.., by the consideration and judgment of said court, the said decree was duly amended by adding thereto and making a part thereof a provision and clause that said defendant pay to this plaintiff alimony to the amount of . . . . . dollars, with . . . . . dollars in addition thereto as solicitor's fees, and that such money should be so paid within . . . . days thereafter, and should stand when paid as a satisfaction in full for all claims for alimony and solicitor's fees on the part of this complainant. And the said plaintiff avers that no part of such sums of money have been paid.

IV. Complaining further, the said plaintiff avers: That under and by virtue of the provisions of the Revised Statutes of the State of Illinois of 1874, Chapter 22, entitled "Chancery," and Chapter 40, entitled "Divorce", such decree, as amended, so entered as aforesaid, has the force and effect of a judgment at law for the payment of money. That such is the construction thereof, and the force and effect to be given to the same, has been adjudicated and determined by the supreme court of said state, and such is the law of said state.

V. That by reason thereof this plaintiff is advised and believes that, under and by virtue of the constitution of the United States, Section I, Article IV, she hath a good right to maintain her cause of action aforesaid in the courts of the state of Wisconsin, to have and recover of the said defendant the said sums of money so awarded to her as aforesaid, and that the said courts will give the same force and effect to said decree so above stated as is given thereto in the state of Illinois.

WHEREFORE, etc.

**1155. Complaint on judgment of justice of the peace in an action brought within five years after its rendition.<sup>3</sup>**

[*Allege rendition of the judgment, etc., as in the first two forms in this chapter, and then allege*]: That the said M. . . . N. . . . the justice of the peace by whom said judgment was rendered died [*or resigned, or removed from the said county of . . . . .*] on or about the . . . . day of . . . . ., 19. . . , [*or set forth the happening of any other fact named in the statutes cited in the note to this form, which authorize the bringing of an action within five years after the rendition of the first judgment*].

[*Add allegation of non-payment and demand of judgment*].

**1156. Complaint by assignee on judgment in federal court in an action commenced in state court.**

I. That heretofore, to-wit, on the . . . . day of . . . . ., 19. . . , at the city of . . . . ., in the state of . . . . ., in the circuit court of the United States, for the . . . . . district of . . . . ., then and there held [*name judgment creditor*] [*a corporation existing under the laws of the state of . . . . ., and having its principal office at the city of . . . . . aforesaid*],

<sup>3</sup>In Wisconsin and South Dakota there are provisions prohibiting the bringing of actions upon a judgment rendered by a justice of the peace of the same county within five years after the rendition thereof except in case of the death, resignation or removal of the justice from the county, or his incapacity to act, or that the process was not personally served on the defendant or on all of the defendants, or in case of the death of some of the parties, or when the docket or record of such judgment is or shall have been lost or destroyed. Wis. Stats. 1913 sec. 3668; S. Dak. C. C. P. 1908 sec. 37.

(Iowa Rev. Codes 1897 sec. 3439): "No action shall be brought upon . . . a judgment of a justice of the peace in the state within eight years after the same is rendered, unless the docket of the justice or record of such judgment is lost or destroyed; but the time during which an action

on a judgment is prohibited by this section shall not be excluded in computing the statutory period of limitation for an action thereon."

(Minn. Gen. Stats. 1913 sec. 7979): Costs shall not be allowed to plaintiff in an action upon a domestic judgment between the same parties, unless such action was brought with previous leave of the court for cause shown; but this shall not apply to an action upon the judgment of a justice brought in another county, or in the same county where the summons was not served upon all the defendants, or in case of the death of a party, or the death, resignation, incapacity to act, or removal from the county of the justice, or the loss of his docket.

In such cases the fact which by the terms of the statute it is necessary to establish in order to entitle the action to be brought should be distinctly alleged.

recovered a judgment which was duly given by the said circuit court of the United States, then and there having jurisdiction of the parties and the subject-matter of the action against the defendant, then being a citizen of the state of . . . . . for . . . . . dollars and costs of suit, in an action wherein the said [*name judgment creditor*] was plaintiff, and the defendant herein was defendant, which said action was originally begun in the circuit court of . . . . . county in said state of . . . . ., by the due and personal service of the summons issued therein, upon this defendant, and was afterwards upon his application duly removed thence into the said circuit court of the United States.

II. That after the rendition of such judgment, to-wit, on or about the . . . . day of . . . . ., 19.., the said [*name judgment creditor*], duly assigned and transferred said judgment to this plaintiff.

III. That the said judgment is wholly unpaid, and there is now due thereon from the said defendant to this plaintiff, the sum of . . . . . dollars, with interest on such sum from the . . . . day of . . . . ., 19..

WHEREFORE, etc.



## CHAPTER XXXIX.

### COMPLAINTS FOR BREACH OF COVENANT.

- |  |  |
|--|--|
| 1157. On a covenant against incumbrances on land.        | 1166. On a covenant to maintain a fence.                                 |
| 1158. The same, one incumbrance being excepted in deed.  | 1167. Against tenant on a covenant to keep in repair.                    |
| 1159. On a covenant for quiet enjoyment.                 | 1168. Against landlord on a covenant to keep in repair.                  |
| 1160. On a covenant of seisin or of right to convey.     | 1169. Against landlord for breach of covenant of quiet possession.       |
| 1161. On a covenant of warranty for failure of title.    | 1170. Against landlord for breach of covenant to complete building.      |
| 1162. The same, by assignee, heir or devisee of grantee. | 1171. Complaint by lessee against lessor for refusal to give possession. |
| 1163. The same, for deficiency in quantity.              | 1172. Against tenant for breach of covenant to pay taxes.                |
| 1164. On grantee's covenant to build.                    |  |
| 1165. On a covenant against nuisances.                   |  |

#### 1157. On a covenant against incumbrances on land.<sup>1</sup>

I. That on the . . . . day of . . . . ., 19. . ., the defendant [and M. . . . his wife] for a valuable consideration, by deed conveyed to the plaintiff in fee simple a farm in the town of . . . . ., county of . . . . . [or otherwise briefly designate the property and the estate therein conveyed].

<sup>1</sup>The complaint should describe particularly the incumbrance and show that it existed at the time of the commencement of the action; it is not sufficient simply to negative the words of the covenant. *Juliand v. Burgott*, 11 Johnson 6. It is not necessary to allege compulsion by suit. *Prescott v. Truman*, 4 Mass. 627. The measure of damage is the amount paid to remove the incumbrance. *Foote v. Burnett*, 10 Ohio St. 317. If it has not been paid nominal damages only are recoverable. An

outstanding lease is an incumbrance. *Fritz v. Pusey*, 31 Minn. 368; 18 N. W. 94. So also is the existence of the right of way of a railway company over the land. *Jerald v. Ely*, 51 Iowa, 321; 1 N. W. 639. The grantee's knowledge of existing incumbrances will not defeat his right to recover. *McGowen v. Myers*, 60 Iowa 256; 14 N. W. 788. Except in case of a known highway. *Burbach v. Schweinler*, 56 Wis. 386; 14 N. W. 449; *Bennett v. Keehn*, 67 Wis. 151; 30 N. W. 112.

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant*] [*or, whereby he covenanted, etc., stating its substance*].

III. That at the time of the making and delivery of said deed the premises were not free from all incumbrance, but on the contrary were subject to the [*inchoate*] right of dower of one E. . . . F. . . ., wife [*or widow*] of one G. . . . H. . . . the former owner of the premises.

IV. And for a further breach the plaintiff alleges that on the . . . . day of . . . . ., 19. . ., one J. . . . K. . . . recovered a judgment of . . . . . dollars, which judgment was on the . . . . day of . . . . ., 19. . ., docketed in said county of [*the county where the premises are situated*] and which judgment at the time of the execution and delivery of the deed remained unpaid and unsatisfied of record.

V. And for a further breach the plaintiff alleges, that at the time of the execution and delivery of said deed the premises were subject to a tax theretofore duly assessed, charged and levied upon the said premises by the said city of . . . . . and the officers thereof, of the sum of . . . . . dollars, and which tax was then remaining due and unpaid and was at the time of the delivery of said deed a lien and incumbrance by law upon the said premises.

VI. That by reason thereof plaintiff was obliged to pay and did on the . . . . day of . . . . ., 19. . ., pay the sum of . . . . . dollars in extinguishing the right of dower [*or the lien of the judgment, or, the tax, or all of them*] aforesaid.

WHEREFORE, etc.

**1158. The same, one incumbrance being excepted in deed.**

I. [*As in preceding form.*]

II. That by said deed the premises conveyed were described as being subject, nevertheless, to the payment of a certain mortgage [*or other incumbrance, describing it by date, names of parties, amount, and the place of record, as in the deed*] and no other grants, titles, charges, estates, judgments, taxes, assessments or incumbrances were mentioned or specified in said deed as existing upon or affecting, or incumbering said premises or the title thereto.

III. That said deed contained a covenant on the part of the defendant by which he, for himself, his heirs, executors and administrators, covenanted and agreed to and with the plaintiff, his heirs, and assigns, that the said premises then were free, clear, discharged and unincumbered of and from all other and former grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever, except as above; meaning, except the mortgage aforementioned [*or set forth a copy of the covenant, as in preceding Form*].

IV. That at the time of the making and delivery of the said deed the premises were not free from all incumbrances other than the mortgage therein excepted, but [*continue as in preceding Form from the \**].

WHEREFORE, etc.

### 1159. On a covenant for quiet enjoyment.<sup>2</sup>

I. That on the . . . . day of . . . . ., 19. . ., the defendant [and M. . . . his wife] for a valuable consideration by deed conveyed to the plaintiff in fee simple a farm in the town of . . . . ., county of . . . . . [*or otherwise briefly designate the property and the estate therein conveyed*].

II: That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant*] [*or, whereby he covenanted, etc., stating its substance as in the preceding Form*].

III. That plaintiff has not been permitted peaceably to occupy and enjoy said premises, or to receive the rents and profits thereof, but on the contrary, on the . . . . day of . . . . ., 19. . ., one E. . . . F. . . . who at the time of making said deed and continually from thence until the time of the eviction hereinafter mentioned was the lawful owner [*or, lawfully entitled to possession*] of said premises, entered into

<sup>2</sup>Actual ouster or eviction by paramount legal title, describing such title, should be alleged. *Rickert v. Schneider*, 9 Wend. 416; *Real v. Hollister*, 20 Nebr. 112; 29 N. W. 189. It is not necessary that the eviction be under legal process or judgment; it is sufficient if the grantee yields under demand

of the holder of the paramount title. *Ogden v. Ball*, 40 Minn. 494; 41 N. W. 453. However, if he yields possession without suit he will be obliged in an action upon the covenant to prove the fact that the title which he yielded was paramount. *Ogden v. Ball*, *supra*.

the same and ejected and removed the plaintiff by due process of law from the possession and occupation of the same [or if only a part designate what part] with the appurtenances, and has ever since kept him out of the same.

IV. That by reason thereof the plaintiff has not only lost said [part of the] premises, but also the sum of . . . . . dollars, by him laid out and expended in and upon the said premises in repairing and improving the same, and has also been obliged to pay the sum of . . . . . dollars costs and charges recovered by the said E. . . . F. . . . in his action for the recovery of said premises, and the sum of . . . . . dollars for his own costs, charges and counsel fees in defending said action.

WHEREFORE, etc.

### 1160. On a covenant of seisin or of right to convey.<sup>3</sup>

I. That on the . . . day of . . . . ., 19. . ., the defendant [and M. . . . . his wife] for a valuable consideration by deed conveyed to the plaintiff in fee simple a farm in the town of . . . . . county of . . . . . [or otherwise briefly designate the property and the estate therein conveyed.]

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant*] [or, whereby he covenanted, etc., *stating its substance.*]

III. That at the time of the execution and delivery of said deed the defendant was not the true, lawful and rightful owner, etc. [*negating the words of the covenant*].

IV. And for a further breach of the said covenant plaintiff alleges that at said time the defendant had not in himself good right, full power, etc. [*negating the words of the covenant*] whereby plaintiff has sustained damage . . . . . dollars.

WHEREFORE, etc.

### 1161. On a covenant of warranty for failure of title.<sup>4</sup>

I. That on the . . . day of . . . . ., 19. . ., the defendant

<sup>3</sup>The covenant of seisin runs with the land. *Mecklem v. Blake*, 22 Wis. 495. In an action for breach of the covenant of seisin eviction must be alleged if the grantee was put in possession, but

where the grantee has no title at the time of the grant the covenant is broken as soon as made, and eviction is not necessary. *Zent v. Picken*, 54 Iowa, 525; 6 N. W. 750.

<sup>4</sup>Where the grantee is kept out

[and M. . . . . his wife] for a valuable consideration by deed conveyed to the plaintiff in fee simple a farm in the town of . . . . . county of . . . . ., [*or otherwise briefly designate the property and the estate therein conveyed*].

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant of warranty, or allege its substance*].

III. That the plaintiff afterwards lawfully entered upon the premises and became seized thereof accordingly.

IV. That the defendant has not warranted and defended the said premises but on the contrary on the . . . . day of . . . . ., 19. . ., one E. . . . F. . . . who at the time of making said deed had and ever since until the last mentioned day continued to have lawful right to the premises by an elder and better title, lawfully entered the premises and ousted the plaintiff thereof and still lawfully holds him out of the same, to his damage . . . . . dollars.

[*Or, where the eviction was by recovery at law*]:

IV. That defendant has not warranted and defended the said premises, but on the contrary one E. . . . F. . . . lawfully claiming the same premises by an elder and better title, afterwards, in an action brought by him in the . . . . . court held at . . . . . in which said M. . . . N. . . . was plaintiff and this plaintiff was defendant [*and of which action due notice was given to the said defendant in this action*], did, on the . . . . day of . . . . ., 19. . ., recover judgment, which was duly given by said court against this plaintiff for his seisin and possession of the premises and afterwards and on the . . . . day of . . . . ., 19. . ., [*by virtue of a writ of execution duly issued thereon*] lawfully entered the premises and ousted the

of possession by one holding under paramount title at the time of the grant, the covenant is broken. In such case omit paragraphs III and IV from the form and insert:

III. That the defendant has not warranted and defended the premises to this plaintiff, but on the contrary, at the time of the making and delivery of said deed, one E. . . . . F. . . . . was seized and possessed of the premises, lawfully claiming the same by an elder and better title, and then lawfully held

and still holds this plaintiff out of possession thereof, to his damage . . . . . dollars.

Actual eviction must be alleged and such eviction must be alleged to have been under paramount title. *Eaton v. Lyman*, 30 Wis. 41. If such eviction be by judgment in an action against the grantee, such judgment will not bind the grantor unless timely notice and opportunity to defend was given to him. *Somers v. Schmidt*, 24 Wis. 417.



plaintiff thereof, and still lawfully holds him out of the same, to his damage . . . . . dollars.

WHEREFORE, etc.

**1162. The same, by assignee, heir or devisee of grantee.**

[*Follow the last preceding Form, inserting between paragraphs III and IV one of the following allegations according to the fact*]:

[*If the action is by an assignee*]: That said [*name grantee*], on or about the . . . . day of . . . . ., 19.., by deed duly executed, in consideration of the sum of . . . . . dollars, conveyed the said premises to one C. . . . D. . . . , his heirs and assigns; and the said C. . . . D. . . . afterwards and on or about the . . . . day of . . . . ., 19.., by deed duly executed, conveyed the said premises to plaintiff.

[*If the action is by an heir*]: That the said [*name grantee*] afterwards and on or about the . . . . day of . . . . ., 19.., died intestate, seized and possessed of said premises; and thereupon said premises and his estate therein descended to the plaintiff, who was and is the sole child and heir at law of the said [*name grantee*], deceased, and that on or about the . . . . day of . . . . ., 19.., plaintiff entered into and continued in possession of said premises until ousted and dispossessed as hereinafter alleged.

[*If the action is by a devisee*]: That on or about the . . . . day of . . . . ., 19.., said [*name grantee*] died leaving a last will and testament, which was on or about the . . . . day of . . . . ., 19.. duly admitted to probate in the . . . . . court of . . . . . county, . . . . . [*where the premises are situated*]; that in and by said will the said premises were devised to plaintiff in fee, and plaintiff thereupon entered into possession thereof and continued in such possession until ousted and dispossessed as hereinafter alleged.

**1163. The same, for deficiency in quantity.**

I. That on the . . . . day of . . . . ., 19.., the defendant [and M. . . . . his wife] for a valuable consideration by deed conveyed to the plaintiff [in fee simple] a farm in the town of . . . . . county of . . . . . in said deed bounded and described as follows: [*copy of description*].

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant, or: whereby he covenanted, etc., stating its substance*].

III. That the said farm contained only sixty acres of land, instead of ninety acres, as described and warranted in said deed, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

#### 1164. On grantee's covenant to build.

I. That in consideration that the plaintiff would sell and convey to the defendant a lot of land [*very briefly designate it*] for the sum of . . . . . dollars, the defendant, on or about the . . . . day of . . . . , 19. . , undertook and promised plaintiff [by his covenant] that he would erect upon the premises a good brick dwelling house, to be occupied as such, and that he would not erect upon the premises any building that would be a nuisance to the vicinity of the premises.

II. That the plaintiff did accordingly sell and convey to the defendant said premises for said sum, but the defendant has not erected a good brick dwelling house on the lot, to be occupied as such, but on the contrary has suffered it to lie open and uninclosed [*or, but on the contrary has erected, etc., stating what*].

III. That said lot was a part of a considerable tract of land which the plaintiff laid out into lots and offered for sale for the purpose of the erection of dwelling houses, requiring each purchaser to covenant to erect a dwelling house, and that the erection of such dwelling house on lots sold improved the residue of the lots belonging to the plaintiff and increased their value and their market price.

IV. That the defendant's violation of this covenant has prevented other lots in the vicinity from becoming valuable to the plaintiff, as they would otherwise have done, and has injuriously affected their condition and hindered the plaintiff from selling them, to his damage . . . . . dollars.

WHEREFORE, etc.

#### 1165. On a covenant against nuisances.

I. That on the . . . . day of . . . . . , 19. . , at . . . . . the plaintiff by his deed conveyed to the defendant for a valuable

consideration, as well as in consideration of the covenant hereinafter mentioned, a lot of land [*very briefly designating it*].

II. That said deed contained a covenant on the part of the defendant, the grantee therein, of which the following is a copy: [*copy of the covenant against nuisances*].

III. That said deed was delivered by the plaintiff to the defendant and by him duly accepted, and he became thereby the owner of the premises and bound by the covenant aforesaid.

IV. That the defendant has erected, or suffered or permitted to be erected, on said premises, a building occupied in a manner which is a nuisance to the vicinity of the premises, to-wit, a building erected for and used as a slaughter house.

V. That the offal and blood in and carried out from said slaughter house and the offensive smell created thereby is a nuisance to the vicinity of the said premises and to the plaintiff, whose house is adjoining, to his damage ..... dollars.

WHEREFORE, etc.

### 1166. On a covenant to maintain a fence.

I. That on the .... day of ....., 19.., the plaintiff and defendant then being owners of lands adjoining, made an agreement in writing, under their hands and seals, and thereby the defendant covenanted to erect a fence upon the boundary line between the said lands of the plaintiff and those of the defendant, and to maintain the same and keep the same in constant repair [*or, an agreement, of which a copy is hereto annexed as a part of this complaint*].

II. [*If there are any conditions on the part of the plaintiff they should be set forth, unless the whole agreement is annexed; and add: That the plaintiff duly performed all the conditions thereof on his part*].

III. That the defendant did not, after the erection of said fence, maintain the same and keep it in continual repair, but on the contrary in the month of ....., 19.., he suffered the same to become dilapidated and broken down and to remain in that condition from that time ever since [*or, until the .... day of ....., 19..*]

IV. That by means thereof the plaintiff suffered great damage by the injury to his lands and crops thereon, and his garden and fruit trees, by cattle coming through said broken down fence from the defendant's land upon his premises, and that he was compelled to repair and rebuild said fence in order to protect his land from the cattle coming from defendant's land, to his damage ..... dollars.

WHEREFORE, etc.

**1167. Against tenant on a covenant to keep in repair.**

I. That on the .... day of ....., 19.., by a lease in writing then made between the plaintiff and defendant, under their hands and seals [*or under the hand and seal of the defendant*] the plaintiff leased to the defendant for one year from said date, at a yearly rent of ..... dollars, a certain dwelling house, with stable and sheds attached, in the village of ..... in the county of ..... the property of the plaintiff, the same being upon a part of the estate of M.... N.... deceased [*or otherwise briefly designate the premises*].

II. That said lease contained a covenant on the part of the defendant, of which the following is a copy: [*copy of the covenant*]. [*Or: II. That the defendant in said lease covenanted that he would, during the term of one year, at his own cost and expense, keep said dwelling house and premises in good repair, and at the expiration of said term leave the said dwelling house and premises in as good condition as he received the same, reasonable wear and tear excepted.*]

III. That the defendant entered upon the premises and occupied the same during the said term of one year under said agreement; but that he has failed to keep the said house and premises in good repair, but on the contrary he has left them in such condition that the fences are broken down, the walls and the roof admit the water and in consequence the plastering has in many places fallen down, the window glass is broken [*or other injuries*] and the house and premises are otherwise injured by reason of the neglect of the defendant to keep them in good repair pursuant to his said agreement, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1168. Against landlord on a covenant to keep in repair.**

I. That on the .... day of ....., 19.., by a lease in writing then made between the plaintiff and defendant under their hands and seals [*or*, under the hand and seal of the defendant] the defendant leased to the plaintiff the premises known as No. ....., street, in the city of ..... for one year from that date, at the yearly rent of ..... dollars.

II. That said lease contained a covenant on the part of defendant, of which the following is a copy: [*copy of covenant to keep in repair*].

III. That the plaintiff entered into possession of said premises under said lease and used the same as a store and warehouse for storing and selling various articles of drygoods.

IV. That the defendant has failed to perform said covenant and keep the premises in repair, and has allowed the walls and roof to become and remain leaky, by means whereof the water has entered said premises and utterly ruined a portion of his said goods and seriously injured others, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1169. Against landlord for breach of covenant of quiet possession.**

I. That on the .... day of ....., 19.., the plaintiff and defendant entered into an agreement under their hands and seals [*or* under the hand and seal of the defendant] whereby the plaintiff hired and the defendant leased for the term of .... years from said date, at a yearly rent of ..... dollars [*here briefly designate the premises*].

II. That said lease contained a covenant on the part of the defendant, of which the following is a copy: [*copy of covenant for quiet possession*]. [*Or*: II. That the defendant in said lease covenanted with the plaintiff that he should peaceably and quietly occupy and enjoy the premises aforesaid for the said term of ..... years.]

III. That the plaintiff has not been permitted peaceably to occupy and enjoy the possession of said premises, but on the contrary after the commencement of the term and on the .... day of ....., 19.., one E.... F.... who was at the time of making said lease and thereafter until the last mentioned day the lawful owner [*or*, lawfully entitled to the



possession] of said premises, entered upon the same and ejected this plaintiff therefrom and has ever since kept him out of possession of the same [or *designate what part*] to his damage . . . . . dollars.

IV. [*Allege special damage, if any, e. g., as follows*]: That the plaintiff, confiding in the covenant of the defendant aforementioned, had purchased a number of farming utensils and implements of husbandry for the cultivation of said premises, and had entered upon said premises and commenced to raise grain and fruit thereon when he was so ejected; and that by reason of the defendant's failure to fulfill said covenant, said farming utensils and implements became of little or no value to him, and he was deprived of the result of his time and labors in cultivating said premises, to the damage of the plaintiff . . . . . dollars. [*Or*: IV. That plaintiff was thereby prevented from continuing his business of a hatter at the place, and compelled to expend . . . . . dollars in removing therefrom, to his damage . . . . . dollars].

WHEREFORE, etc.

### 1170. Against landlord for breach of covenant to complete building.

I. That on the . . . . day of . . . . ., 19.., at . . . . ., the said plaintiffs entered into an agreement in writing with the defendants under the firm name of A. . . . B. . . . & Co., and by the defendants under the firm name of C. . . . D. . . . & Co., of which agreement the following is a copy [*copy agreement*].

II. That after the making of this agreement and on or about the . . . . day of . . . . ., 19.., defendants delivered and plaintiffs took possession of the first floor and basement of said building, under and in pursuance of said agreement, no lease or other agreement having been made or executed between the parties; and that the plaintiffs took possession thereof upon the faith and assurance of defendants, and full belief thereof, that the said premises were finished in the same manner as the store then occupied by E. . . . F. . . . in the same street, and in accordance with the terms of said agreement.

III. That said premises were not finished in the same manner as the store at the time of making such agreement,

occupied by E. . . . F. . . . in the same street, but on the contrary thereof the roof of the building and the gutters, water-courses and leaders therefrom were constructed and finished in a different and less perfect manner than those upon that store, and an obstruction was placed over the top of the leader that conducted the water from the said roof of the building, which obstructed and prevented the water from passing off from said roof, whereas no such obstruction was placed over the top of the leader or gutter or water-course from the roof of the store then occupied by said E. . . . F. . . . in the same street.

IV. That in consequence thereof the water falling upon the roof of said building mentioned in said agreement was obstructed and prevented from passing off through the gutters, water-courses or leader, and was forced back upon and ran through the skylight in the roof and down into the said first floor and basement and upon the silks, goods, wares and merchandise of the said plaintiffs kept therein, and greatly injured the same, to the damage of the plaintiffs . . . . . dollars.

WHEREFORE, etc.

**1171. Complaint by lessee against lessor for refusal to give possession.**

I. [*Allege execution of lease as in preceding forms in this chapter.*]

II. [*If rent is payable in advance allege payment or tender of the rent necessary under the terms of the lease to entitle plaintiff to possession.*]

III. That on the . . . . day of . . . . ., 19. . ., the plaintiff demanded of defendant, possession of the said demised premises, but the defendant refused to give plaintiff possession thereof, and still refuses, and plaintiff was thereby and still is deprived and kept out of the possession of said premises.

IV. That, as defendant well knew, plaintiff was at the time of making said agreement engaged in the business of [*state business*] and had hired the said store for the purpose of continuing his said business therein after the said . . . . day of . . . . ., 19. . ., the said store being, by its location and construction, especially adapted to the prosecution of his

said business; that the value of the use of said premises to the plaintiff was the sum of at least ..... dollars per month.

V. That plaintiff has suffered damage ..... dollars.  
WHEREFORE, etc.

**1172. Against tenant for breach of covenant to pay taxes.**

I. [*Allege execution of lease as in preceding forms in this chapter.*]

II. [*If copy of the lease be not attached allege that the lease contained a covenant to pay taxes setting the same forth in full or in legal effect.*]

III. That on the .... day of ....., 19.., there was levied upon the real property of said city, the annual tax roll and the taxes therein contained by the [*name taxing authority*] whereby the said demised premises became subject to a tax in the amount of ..... dollars which said tax thereby became a lien on said demised premises.

IV. That the said defendant has not paid the said tax upon the said demised premises, or any part thereof, but that the same, amounting to ..... dollars, with interest thereon at the rate of ..... per cent per annum, has, in violation of his said covenant, been left wholly due and unpaid by said defendant.

V. That on or about the .... day of ....., 19.., plaintiff was compelled to and did pay the sum of ..... dollars in settlement of said taxes, and in extinguishment of the lien thereof, no part of which sum has been repaid by defendant, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

## CHAPTER XL.

### COMPLAINTS FOR BREACH OF CONTRACT OF EMPLOYMENT.

- |  |   |
|--|---|
| 1173. By employee wrongfully discharged.                 | completing building.  |
| 1174. By employer against employee refusing to serve.    | 1180. Against a builder for not well finishing a building.        |
| 1175. By apprentice against master.                      | 1181. Against an attorney for negligent prosecution of an action. |
| 1176. By master against father of apprentice.            | 1182. Same, for negligent defense.                                |
| 1177. For breach of contract to manufacture goods.       | 1183. The same, for negligence in examining a title.              |
| 1178. For goods made on defendant's order, not accepted. | 1184. Against a physician for malpractice.                        |
| 1179. Against a builder for not                          | 1185. Against a surgeon for malpractice.                          |

Where an employeè under an entire contract wrongfully terminates it he cannot recover either on the contract or upon *quantum meruit* for services rendered up to the time of such termination. If he be discharged, however, or wrongfully prevented by his master from rendering full performance he can recover upon the contract for the services rendered prior to such discharge at the contract rate, and also his damages for not being allowed to complete the contract; not exceeding, however, the full amount he could have earned by completing the contract; these damages being subject to reduction by proof that the employee might reasonably have earned wages during such time. In case the employee was rightfully discharged, he may still recover for the services actually rendered, subject, however, to the employer's right to recoup such damages as he is legally entitled to by reason of the facts which rendered the discharge justifiable. *Hildebrand v. American Fine Art Co.*, 109 Wis. 171; 85 N. W. 268.

#### 1173. By employee wrongfully discharged.

I. That on the .... day of ....., 19.., at ....., plaintiff and defendants made an agreement in writing, of

which a copy is annexed, and made a part of this complaint marked Exhibit A [*or, made an agreement whereby the plaintiff undertook to render his services to the defendant as bookkeeper, or, as salesman, or, as teacher, etc., as the case may be, from said date to the . . . . day of . . . . ., 19.., in consideration whereof the defendants agreed so to employ the plaintiff during said period and to pay him for his services at the rate of . . . . . dollars each month*].

II. That the plaintiff [entered upon his employment under said agreement and duly discharged all the duties thereof until the . . . . day of . . . . ., 19.., and he] has ever since been and still is ready and willing [and on the . . . . day of . . . . ., 19.., duly offered] to perform all the conditions of said agreement upon his part.

III. That the defendant then refused and still refuses to allow him to do so, or to pay him therefor, to his damage . . . . . dollars.

WHEREFORE, etc.

#### 1174. By employer against employee refusing to serve.

I. That on the . . . . day of . . . . ., 19.., at . . . . . the plaintiff and defendant made an agreement in writing, of which a copy is annexed and made part of this complaint, marked Exhibit A [*or, made an agreement whereby the defendant agreed to render his services to the plaintiff as bookkeeper, or, as salesman, or as teacher, etc., as the case may be, from said date to the . . . . day of . . . . ., 19..; in consideration whereof the plaintiff agreed so to employ the defendant during said period, and to pay him for his services at the rate of . . . . . dollars each month*].

II. That the plaintiff [has ever been ready and willing to employ the defendant, and on the . . . . day of . . . . ., 19.., offered to do so; and has otherwise] duly performed all the conditions thereof on his part.

III. That the defendant entered upon the service of the plaintiff on the above mentioned day, but afterwards, on the . . . . day of . . . . ., 19.., he refused to serve the plaintiff as aforesaid; to his damage . . . . . dollars. [*Or, where the defendant refused to commence service: III. That the defendant wholly refused to perform said agreement, to the plaintiff's damage . . . . . dollars*].

WHEREFORE, etc.



**1175. By apprentice against master.**

I. That on the .... day of ....., 19.., at ..... the plaintiff, with his [father E.... F....] made an indenture under his hand and seal with the defendant, a copy of which is annexed and made part of this complaint, marked Exhibit A.

II. That the plaintiff has duly performed all the conditions thereof on his part.

III. That the defendant has not instructed the plaintiff in the business of ..... according to his covenant, to his damage ..... dollars.

IV. And for a further breach the plaintiff alleges that the defendant has not allowed or provided for the plaintiff meat, drink, washing, lodging and other necessaries according to his covenant, to his damage ..... dollars.

WHEREFORE, etc.

**1176. By master against father of apprentice.**

I. That on the .... day of ....., 19.., at ..... E.... F.... [the apprentice] with the consent of the defendant, made an indenture under his hand and seal, a copy of which is annexed, as a part of this complaint, and marked Exhibit A.

II. That at the same time and place the defendant made an agreement under his hand and seal, a copy of which is also annexed as a part of this complaint and marked Exhibit B.

III. That the plaintiff duly performed all the conditions, of said indenture and agreement on his part.

IV. That from and ever since the .... day of ....., 19.., the said E.... F.... has wilfully absented himself from the service of the plaintiff, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1177. For breach of contract to manufacture goods.**

I. That on the .... day of ....., 19.., at ..... the defendant promised and agreed with the plaintiff to manufacture and deliver to the plaintiff [*describe the goods to be manufactured*] at the price of ..... dollars, for which the plaintiff agreed to pay the defendant ..... dollars.

II. That the plaintiff duly performed all the conditions of said agreement on his part.

III. That defendant did manufacture, under said agreement, [*name goods manufactured*] but manufactured them in an unskillful and unworkmanlike manner, in this [*here describe defects*] whereby the plaintiff suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1178. For goods made on defendant's order, not accepted.**

I. That on the . . . . day of . . . . ., 19.., at . . . . . the defendant employed the plaintiff to make for him [*designate articles*] and agreed to pay for the same, upon delivery thereof, . . . . . dollars [of which contract a copy is annexed as a part of this complaint].

II. That the plaintiff made the said [articles] and on the . . . . day of . . . . ., 19.., tendered the same to the defendant and has ever since been ready and willing to deliver them, and has otherwise duly performed all the conditions on his part.

III. That the defendant has not accepted or paid for the same.

WHEREFORE, etc.

**1179. Against a builder for not completing building.**

I. That on the . . . . day of . . . . ., 19.., at . . . . ., plaintiff and defendant entered into an agreement, under their hands and seals [*or, the hand and seal of the defendant*] of which a copy is annexed and made part of this complaint, marked Exhibit A [*or state its legal effect, e. g., thus: whereby defendant agreed to erect, in a substantial manner, a two-story frame house in the village of . . . . . county of . . . . . and to have the said house completed and ready for occupancy on or before the . . . . day of . . . . ., 19.., for which this plaintiff agreed to pay him . . . . . dollars payable as follows: When the foundation should be laid, the sum of . . . . . dollars; when the first story should be up and the second tier of beams laid, . . . . . dollars; when the second story should be up and the third tier of beams laid . . . . . dollars; and when the roof should be on, . . . . . dollars; and*

when the house should be entirely completed the balance of . . . . . dollars.

II. That plaintiff duly performed all the conditions thereof on his part.

III. That the defendant entered upon the performance of the work under said contract, and laid the foundations of the said house, and commenced the erection of the first story thereof, but has neglected to finish the said building pursuant to said contract and has left the same with the foundations laid and the walls of the first story partly up, and that although the time for the completion of said building expired before this action he refuses to complete the same.

IV. That the plaintiff, on the . . . . day of . . . . ., 19. . . , at . . . . ., made an agreement with one E. . . . F. . . . whereby he agreed to let, and said E. . . . F. . . . agreed to hire the said building for one year from the . . . . day of . . . . ., 19. . . , at the yearly rent of . . . . . dollars, of which the defendant had due notice.

V. That by reason of the defendant's failure to complete the contract aforesaid upon his part, the plaintiff has been unable to complete said house so as to give said E. . . . F. . . . occupancy thereof, and has been deprived of the profits of said lease and has been otherwise greatly injured, to his damage . . . . . dollars.

WHEREFORE, etc.

### 1180. Against a builder for not well finishing a building.

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., this plaintiff and the defendant entered into an agreement in writing under their hands and seals, of which a copy is annexed and made part of this complaint.

II. That the plaintiff duly fulfilled all the conditions thereof on his part.

III. That the defendant did not fulfill said contract on his part, but on the contrary erected said building in so unskillful and negligent a manner [and of so unsuitable materials] that shortly after its completion the foundation settled, the walls cracked, the roof and walls became leaky, a considerable portion of the plastering fell, and the house otherwise was and is entirely untenable and nearly use-

less through the negligent and unskillful manner of its erection, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1181. Against an attorney for negligent prosecution of an action.**

I. That the defendant, being an attorney of the ..... court of this state, the plaintiff in or about the month of ....., 19.., retained and employed him as such, for a compensation to be paid him therefor, to prosecute and conduct an action in the ..... court on behalf of this plaintiff against one E.... F.... for the recovery of a large sum of money due from him to this plaintiff, and the defendant undertook to prosecute said action in a proper, skillful and diligent manner as the attorney of the plaintiff.

II. That the defendant might, in case he had prosecuted said action with due diligence and skill, have obtained final judgment therein for this plaintiff before the .... day of ....., 19.., yet he did not do so, but so negligently and unskillfully conducted said action that by his negligence, delay and want of skill he did not obtain judgment until the .... day of ....., 19.., and that meanwhile said E.... F.... had become insolvent, whereby the plaintiff was hindered and deprived of the means of recovering said sum of money, to his damage ..... dollars.

WHEREFORE, etc.

**1182. Same, for negligent defense.**

I. That the defendant, being an attorney of the ..... court of this state, the plaintiff, in the month of ....., 19.., at ....., employed him as such, for a compensation to be paid him therefor, to defend on behalf of this plaintiff an action brought against him by E.... F.... then pending in the ..... court for the recovery of a large sum of money due from him to this plaintiff, and the defendant undertook to defend said action in a proper, skillful and diligent manner as the attorney of the plaintiff.

II. That the plaintiff had a complete defense to said action which he communicated to the defendant on or about the .... day of ....., 19..

III. That such proceedings were had in such action that it became the duty of the defendant as the attorney of this plaintiff to interpose said defense by answer to the complaint therein, on or about the . . . . day of . . . ., 19.., but he wholly neglected so to do, and by reason thereof and through his negligence, judgment by default was obtained against the plaintiff in said action, and by reason thereof this plaintiff was compelled to pay to the said E. . . . F. . . ., . . . . dollars, the sum so recovered by him, and was put to costs and charges in his endeavor to defend such action, amounting to the sum of . . . . dollars, and lost the means of recovering the same back from said E. . . . F. . . .

WHEREFORE, etc.

### 1183. The same, for negligence in examining a title.

I. That at a time hereafter mentioned the plaintiff made a contract with one E. . . . F. . . . for the purchase from him of certain real property [*very briefly designate the premises*] for the sum of . . . . dollars, which property said M. . . . N. . . . assumed to have power to convey in fee, and clear of all incumbrances.

II. That the defendant being an attorney, the plaintiff, at . . . . in the month of . . . ., 19.., employed him as such to examine the title of E. . . . F. . . . to said property, and to ascertain if the title were good, and if any incumbrances existed thereon, and to cause and procure an estate therein in fee simple and clear of all incumbrance, to be conveyed to the plaintiff which the defendant, for compensation to be paid to him, undertook to do.

III. That the defendant did not do so, but negligently and unskillfully conducted in respect to such examination and did not use endeavors to cause or procure a good and sufficient title in fee, clear of incumbrance to be conveyed to the plaintiff, but wrongfully advised and induced the plaintiff to pay said E. . . . F. . . . the sum of . . . . dollars, being said purchase money of the premises, when in fact said M. . . . N. . . . had no title thereto [*or when said property was subject to incumbrances to the sum of . . . . dollars, as follows (specifying them)*], and the plaintiff in order to release the premises from said incumbrances was compelled to pay the holders thereof the sum of . . . . dollars]; to



the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1184. Against a physician for malpractice.**

I. That the defendant being a physician, the plaintiff, at ....., in the month of ....., 19.., employed him as such to attend the plaintiff to cure him of a malady from which he then suffered, for compensation to be paid therefor, and for that purpose he undertook as a physician to attend and care for the plaintiff.

II. That defendant then entered upon such employment but did not use due and proper care or skill in endeavoring to cure the plaintiff of the said malady, in this: that the defendant did not bleed the plaintiff at an early stage of the sickness, when if the defendant had used due or proper care or skill in that behalf he would have bled him; and also in this, that the defendant at a subsequent stage of the plaintiff's malady bled the plaintiff in a profuse and immoderate extent, taking from him ... ounces of blood, the same being an excessive and injurious quantity, and which the defendant if he had used proper care and skill, ought not to have taken; and also in this, that the defendant, on, etc., and on the fourteen days next following, unskillfully and negligently administered to the plaintiff ... grains of mercury every six hours during that time, the same being excessive and injurious doses, and which the defendant if he had used due and proper care and skill ought not to have administered to the plaintiff.

III. By reason of the several premises the plaintiff was injured in his health and constitution, suffered great pain, was weakened in body, and was obliged to and did expend the sum of ..... dollars in endeavoring to be cured of the said sickness, which was prolonged and increased by the said unskillful and improper conduct of the defendant, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1185. Against a surgeon for malpractice.**

I. That on the ... day of ....., 19.., at ....., the plaintiff was kicked on the right leg by a vicious horse, and the same was thereby broken and greatly injured. That at

that time, the defendant being a surgeon, the plaintiff called and informed him of the manner of receiving such injury, and employed him as such surgeon to examine such broken leg and ascertain the extent of the injury thereby caused and to set the same, if broken, and to treat and heal the same for whatever the injury was to it; and for that purpose the said defendant undertook to treat and heal said injured leg for whatever the injury was or may have been to it.

II. That pursuant to said undertaking said defendant examined the said injured leg of the plaintiff in a negligent and unskillful manner, and failed to ascertain that the same was broken or the extent of the injury to the same, and that he treated and tried to heal the same as though it was not broken, greatly to the plaintiff's injury.

III. That by reason of the defendant's negligence and unskillful examination and treatment of plaintiff's said broken leg the plaintiff was made sick and kept from attending to his business ever since the date aforesaid, suffered much pain and annoyance and was put to great expense, and has been and still is disabled from attending to his labor and business, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

## CHAPTER XLI.

### COMPLAINTS FOR BREACH OF CONTRACTS OF INDEMNITY.

- |  |  |
|--|--|
| 1186. Surety against principal on promise to indemnify.                    | 1189. The same, against sureties on copartners' bond of indemnity.   |
| 1187. Sub-tenant against immediate lessor.                                 | 1190. Upon promise to indemnify plaintiff for defending an action for money claimed by defendant and a third person. |
| 1188. Retiring partner against copartners on promise to pay debts of firm. |  |

In an action upon a contract of indemnity against damage, the allegations of the complaint must show actual damage and that plaintiff was compelled to pay, by action or otherwise, the amount which he claims to recover. If compelled to pay by action the court in which the action is brought should be named and the action particularly described, giving the date of the judgment. If, however, the agreement of indemnity was simply to indemnify from liability it is only necessary to allege facts showing that the liability has been incurred and become absolute. *Selleck v. Griswold*, 57 Wis. 291; 15 N. W. 151.

#### 1186. Surety against principal on promise to indemnify.

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the defendant, in consideration that the plaintiff would become surety for him by executing a bond [*or name other obligation*] of which a copy is annexed as a part of this complaint, marked Exhibit A, the defendant promised and agreed with the plaintiff that he would indemnify him and save him harmless from and against all damages, costs, and charges which he might sustain by reason of his becoming surety as aforesaid.

II. That the plaintiff, relying upon such promise of the defendant, duly executed and delivered such bond [*or other obligation*].

III. That the defendant did not indemnify the plaintiff and save him harmless from such damages, costs and charges; but, on the contrary, the plaintiff by a judgment on or about the .... day of ....., 19.., duly given against him by the ..... court at ..... in an action brought against him upon said bond, was compelled to pay, and on or about the .... day of ....., 19.., did pay ..... dollars to E.... F.... in satisfaction and discharge of said bond, and he incurred also necessary costs and expenses in said action and on account of said bond, to the amount of ..... dollars.

IV. That defendant had notice of the premises, but has not paid any part thereof to the plaintiff.

WHEREFORE, etc.

### 1187. Sub-tenant against immediate lessor.

I. That at the times hereinafter mentioned the defendant held certain premises [*very briefly designating them*] as tenant thereof to one M.... N.... at a yearly rent of ..... dollars, payable by the defendant to said M.... N.... on the [*state days of payment*].

II. That on the .... day of ....., 19.., in consideration that the plaintiff then became the tenant to the defendant of said premises [*or, of ....., which premises were a portion of the above described premises*] at a yearly rent of ..... dollars, payable to him by the plaintiff, the defendant gave to the plaintiff a written agreement to indemnify him, of which a copy is attached hereto, marked Exhibit A [*or state its substance, e. g., thus*: and thereby promised that he would, during the continuance of the tenancy of the plaintiff, indemnify him and save him harmless from and against the payment of the rent payable to M.... N.... as aforesaid, and from and against all costs, damages or expenses to which he might be put by reason of any default in the payment thereof].

III. That the defendant, contrary to his promise, omitted to pay the rent which became due to said M.... N.... on the .... day of ....., 19.., which was during the tenancy of the plaintiff under said agreement.

IV. That by reason thereof said M.... N.... on the .... day of ....., 19.., in the ..... court of ..... county, commenced proceedings to recover the possession of

said premises, which were then occupied by the plaintiff under said agreement, for the non-payment of said rent; and thereby the plaintiff was obliged to pay, and on the . . . . day of . . . . ., 19.., did pay to said M. . . . N. . . . to the use of the defendant the sum of . . . . . dollars, the amount of said rent, together with . . . . . dollars, the costs and charges of said proceedings, and was put to great trouble and inconvenience, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1188. Retiring partner against copartners on promise to pay debts of firm.**

I. That the plaintiff and the defendants, having been partners in trade at . . . . ., under the firm name of B. . . . & Z. . . ., on the . . . . day of . . . . ., 19.., dissolved the partnership and mutually agreed that the defendants should take and keep all the partnership property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm and all costs and charges thence arising.

II. That the plaintiff duly performed all the conditions thereof on his part.

III. That the defendants have not paid all said debts nor indemnified the plaintiff therefrom, but on the contrary, on the . . . . day of . . . . ., 19.., one M. . . . N. . . . recovered judgment, which was duly given in the . . . . . court against the plaintiff and defendants, upon a debt due from the said firm to the said M. . . . N. . . ., of which debt the defendants had notice but failed to pay, and on the . . . . day of . . . . ., 19.., the plaintiff paid . . . . . dollars in satisfaction of the same.

IV. And for a further breach the plaintiff alleges, etc. [*setting forth any other liabilities*].

V. That the defendants have not paid the same to the plaintiff.

WHEREFORE, etc.

**1189. The same, against sureties on copartners' bond of indemnity.**

I. That on the . . . . day of . . . . ., 19.., the plaintiff and one C. . . . D. . . ., theretofore copartners in business as



plumbers, in the city of . . . . . under the firm name of A . . . . B . . . . & Co. dissolved their connection as such copartners and thereupon entered into an agreement in writing, of said date, duly executed and signed by them respectively, and delivered, whereby it was among other things mutually agreed that the said C . . . . D . . . . should retain and keep to his sole and separate use all and singular the partnership property of every name and character, whether in action or possession, and wheresoever situated; and in consideration thereof, whereas the said copartnership was indebted to sundry persons in sundry considerable sums of money, he should pay and discharge the debts so due by the said firm to the extent of . . . . . dollars from his own individual resources, and to the like extent hold the plaintiff harmless and indemnified of and from and by reason of any claims or liabilities due by the said firm [*or, instead of stating the substance, say: which agreement contained covenants on the part of the said C . . . . D . . . ., of which the following is a copy: copy of covenant*].

II. That the defendants, in consideration of said agreement between said C . . . . D . . . . and the plaintiff, and of one dollar to each of them then paid by the plaintiff, entered into an undertaking in writing, duly executed and signed by them respectively, and delivered to the plaintiff [a copy whereof is annexed as a part of this complaint, marked Exhibit A] whereby they severally undertook and bound themselves to the plaintiff for the faithful performance by the said C . . . . D . . . . of the covenants in said agreement to be kept and performed on said C . . . . D . . . . 's part.

III. That said C . . . . D . . . ., under his said agreement with the plaintiff, retained and kept to his sole and separate use all the partnership property of the firm, but has not pursuant thereto paid and discharged the debts due by said firm to the extent aforesaid and has failed to hold this plaintiff harmless and indemnified to the like extent, of and from and by reason of any claim or liabilities due by the said firm.

IV. That at the time of the dissolution of the partnership and agreement aforesaid, the said firm were indebted to the firm of L . . . . & Co., of . . . . . for merchandise sold and delivered, in the sum of . . . . . dollars, which was then due and payable, which indebtedness formed a part of the

..... dollars, debts of A.... B.... & Co., and was included among such debts, to be paid by the said C.... D.... under his agreement aforesaid with the plaintiff; but the said C.... D...., although requested, would not pay L.... & Co. their said demand, or any part thereof.

V. That on the .... day of ....., 19.., last, an action was duly commenced by the plaintiff, in the ..... court of ..... county, to recover upon and by virtue of the aforesaid agreement, from the said C.... D.... the said amount with interest, then due by the said A.... B.... & Co., to the said firm of L.... & Co., amounting to ..... dollars, and interest thereon; and such proceedings were thereupon had that on the .... day of ....., 19.., judgment was recovered in such action [which was duly given] in favor of the plaintiff against the said C.... D.... for the sum of ..... dollars, including costs, upon which judgment execution was at once duly issued against the said C.... D.... and is returned wholly unsatisfied.

VI. That prior to the commencement of said action the plaintiff caused notice in writing to be served on the defendants respectively, as sureties aforesaid, of his intention to commence such action to compel the payment of the indebtedness aforesaid to said L.... & Co., by said C.... D.... or for him, but the defendants altogether neglected to pay attention to said notice.

VII. That plaintiff has necessarily paid or expended, in consequence of the neglect and refusal of said C.... D.... to comply with his agreement aforesaid with the plaintiff, at different times since the said .... day of ....., 19.., in addition to the costs of said action included in said judgment, for legal costs, counsel fees, disbursements and for other reasonable expenses, divers sums of money, amounting in the aggregate to ..... dollars, which remain due and unpaid to the plaintiff by the said C.... D...., who, although [on the .... day of ....., 19..] requested, refuses to make payment thereof to the plaintiff.

VIII. That the defendants [although on the .... day of ....., 19.., requested] have not paid to the plaintiff the amount of said judgment, or the legal costs, counsel fees, disbursements and expenses aforesaid.

WHEREFORE, etc.

**1190. Upon promise to indemnify plaintiff for defending an action for money claimed by defendant and a third person.**

I. That on or about the .... day of ....., 19.., one M.... N.... deposited with the plaintiff ..... dollars.

II. That afterwards, on the .... day of ....., 19.., the plaintiff, at the request of the defendant, delivered to him the said sum of money so received from the said M.... N...., the defendant then claiming the same and the plaintiff not knowing to whom the same belonged.

III. That the said M.... N.... thereafter threatened to commence an action at law against the plaintiff for the recovery of said money.

IV. That afterwards, on the .... day of ....., 19.., the plaintiff, at the request of the defendant, agreed with the defendant that he would defend any action which the said M.... N.... should commence against him for the said money, and the defendant, in consideration of the premises then promised the plaintiff to save him harmless from the consequences of the said action.

V. That the said M.... N.... afterwards, on, etc., prosecuted an action against the plaintiff in the ..... court of ..... county, for the recovery of the said sum of money, of which the defendant then had notice.

VI. That plaintiff, with the privity of the defendant, and to the best of his ability, defended the said action, but the said M.... N.... in ..... term, 19.., of said court, recovered a judgment against the plaintiff in said action to the amount of ..... dollars, and afterwards an execution issued upon the said judgment, and the plaintiff, to prevent his property from being taken on said execution, was forced to pay and on the .... day of ....., 19.., did pay the said sum of ..... dollars, and also the sum of ..... dollars for poundage and officers' fees and other expenses upon the said writ. And plaintiff was also, by means of the premises, put to other charges and expenses of his moneys, amounting to the sum of ..... dollars, in defending and settling the said action.

WHEREFORE, etc.

## CHAPTER XLII.

### COMPLAINTS FOR BREACH OF PROMISE OF MARRIAGE.

- |   |  |                                   |
|---|--|-----------------------------------|
| 1191. For refusal.                                  |  | 1193. The same, alleging marriage |
| 1192. The same, with allegations of special damage. |  | with another.                     |

#### 1191. For refusal.

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., in consideration that the plaintiff, who was then unmarried would marry the defendant on request, the defendant promised to marry the plaintiff within a reasonable time [*or, on the . . . . day of . . . . ., 19. . .; or, on request; or otherwise, according to the tenor of the promise*].

II. That plaintiff, relying upon said promise, has always since remained and now is ready and willing to marry the defendant.

III. That defendant has failed and refused to marry the plaintiff, although a reasonable time elapsed before this action [*or, although she, on the . . . . day of . . . . ., 19. . ., requested him so to do*], to her damage . . . . . dollars.

WHEREFORE, etc.

#### 1192. The same, with allegations of special damage.

[*Allegations I, II and III as in the last preceding Form.*]

IV. That by reason of his said promise of marriage so made as aforesaid, the defendant was enabled to and did debauch the plaintiff, whereby the health of the plaintiff was seriously injured and she suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1193. The same, alleging marriage with another.**

[*I and II as in preceding form.*]

III. That the defendant afterwards married a certain other person, to-wit, one M. . . . N. . . . contrary to his said promise to the plaintiff. [*Or:* III. That at the time of making said promise the defendant represented to the plaintiff that he was unmarried, whereas, in fact, he was then married to another person, of which fact the plaintiff had no notice.]

WHEREFORE, etc.



## CHAPTER XLIII.

### COMPLAINTS FOR BREACH OF CONTRACT OF SALE OF PERSONAL PROPERTY.

- |  |   |
|--|---|
| 1194. Against seller for not delivering.   | 1202. Seller against buyer for refusal to receive goods sold.                                 |
| 1195. The same, on oral contract alleging part of payment.   | 1203. The same, on a contract made by a broker.   |
| 1196. The same, alleging delivery of part of goods.  | 1204. Seller against buyer for refusal to execute note.                                       |
| 1197. Allegation of special damage for loss of profits under a sub-contract.                                   | 1205. Seller against buyer, after resale by auction.  |
| 1198. Allegation of special damages because the goods cannot be obtained in market.                            | 1206. For breach of contract to redeliver goods, or to pay for them in a reasonable time.     |
| 1199. Allegations of special or consequential damages.   | 1207. For breach of contract not to carry on rival business.                                  |
| 1200. Allegation of refusal to perform by defendant, excusing plaintiff's failure to offer to receive and pay. | 1208. By seller against buyer for anticipatory breach excusing offer to perform by plaintiff. |
| 1201. Against seller of stock for failure to deliver.  | 1209. By buyer against seller for anticipatory breach excusing non-payment.                   |

#### 1194. Against seller for not delivering.

I. That on the . . . . day of . . . . ., 19.., at . . . . . the plaintiff and the defendant entered into an agreement [in writing, which was subscribed by the defendant, *or*, by the agent of the defendant duly authorized thereto, and thereby it was mutually agreed between them, as follows]: that the defendant should sell and deliver to the plaintiff at . . . . ., and on or before the . . . . day of . . . . ., 19.. [*or*, on demand, *or*, within a reasonable time, *or otherwise as the case was*] fifty barrels of flour and that the plaintiff should pay the defendant therefor, upon the delivery of said flour, at the rate of . . . . . dollars for each barrel.

II. *Where neither time nor place of delivery were fixed*: That on the . . . . day of . . . . ., 19.., which was a reasonable time after the making of said contract, at . . . . ., the

plaintiff was ready and willing, and duly offered to receive and pay for said flour and otherwise has duly performed all the conditions thereof on his part.

*Or: II. [Where both time and place were fixed]:* That the plaintiff was ready at the time and place appointed to receive said flour, and to pay for the same according to the agreement, and otherwise has duly performed all the conditions thereof on his part.

*Or: II. [Where the particular time of delivery was not appointed]:* That on the . . . . day of . . . . ., 19.., which was a reasonable time after the making of said contract, and at the place appointed, the plaintiff was ready to receive said flour, and pay for the same according to the agreement, of which the defendant had due notice; and the plaintiff has otherwise performed all the conditions thereof on his part.

*Or: II. [Where tender and demand are necessary to be proved under the agreement]:* That on the . . . . day of . . . . ., 19.., at . . . . ., the plaintiff was ready, and duly offered to the defendant, to receive and pay for said flour pursuant to the agreement, and requested the defendant to deliver the same; and otherwise has duly performed all the conditions thereof on his part.

III. That the defendant has failed and refused to deliver the said flour, or any part thereof, [*or, if part has been delivered, add: except . . . . barrels of said flour, which was delivered by defendant and paid for by plaintiff on the . . . . day of . . . . ., 19..*], whereby the plaintiff has suffered damage to the amount of . . . . . dollars.<sup>1</sup>

WHEREFORE, etc.

### 1195. The same, on oral contract alleging part payment.<sup>2</sup>

I. That on the . . . . day of . . . . ., 19.., at . . . . ., it was mutually agreed between the plaintiff and the defendant that the defendant should sell and deliver to the plaintiff at . . . . . and on or before the . . . . day of . . . . ., 19.. [*designate the thing*] and that the plaintiff should pay to the

<sup>1</sup>Under this general statement of damage only ordinary damage can be recovered, namely the difference between the contract price of the goods and the market price of the same quality of goods at the time

of the delivery.

<sup>2</sup>To take the case out of the statute of frauds the part payment must be made at the time of the making of the contract.

defendant therefor at the rate of ..... dollars per .... amounting to ..... dollars, payable as follows: ..... dollars at the time of making said agreement, and the residue on the delivery of the said property.

II. That the plaintiff thereupon paid to the defendant the sum of ..... dollars in pursuance of the agreement.

[Add allegations of default by defendant and willingness to receive by the plaintiff, as in first Form in this chapter.]

WHEREFORE, etc.

### 1196. The same, alleging delivery of part of goods.<sup>3</sup>

[Proceed as in last above form, inserting in place of allegation II the following:]

II. That at the time of the making of said contract [or, thereafter and on the .... day of ....., 19.., at .....] the defendant delivered and the plaintiff accepted a part of said property, to-wit [describe goods delivered] in pursuance of and as part performance of said contract.

[Add other allegations as in preceding forms.]

### 1197. Allegation of special damage for loss of profits under a sub-contract.<sup>4</sup>

That such goods were and are not commonly purchasable in market; that, at the time of the making of the aforesaid agreement, one E.... F.... had agreed to purchase said goods of plaintiff, and to pay him therefor the sum of ..... dollars; that defendant had notice of plaintiff's said agreement with said E.... F...., and the price so agreed to be paid for said goods, and had agreed to supply said goods to plaintiff to enable him to complete his said agreement with said E.... F....

### 1198. Allegation of special damages because the goods cannot be obtained in market.

That such goods are not, and were not at the times afore-

<sup>3</sup>Delivery and acceptance of a part of the property in pursuance of the contract takes the case out of the statute of frauds whether the delivery and acceptance be at the time of making the contract

or afterward. *Arnson v. Doehner*, 35 Wis. 615.

<sup>4</sup>If special and consequential damages are sought the facts must be alleged; see Form 1199 *infra*.

said, purchasable in market at . . . . . [*place of delivery*], and could not be obtained by plaintiff prior to the . . . day of . . . . ., 19. .; that because of defendant's failure to deliver said goods as aforesaid, and said delay in securing other goods of the same character [*state nature of special loss resulting*].

### 1199. Allegations of special or consequential damages.

[*If goods are not obtainable in the market and have been purchased for the purpose of filling a contract to resell already made, or if there be other circumstances causing special damages, and such circumstances were known to the defendant, such special damages may be recovered, but the facts must be alleged in the complaint. Guetzkow v. Andrews, 92 Wis. 214; 66 N. W. 119, as for instance*]:

That prior to the making of said agreement the plaintiff had entered into a contract with one M. . . . N. . . . to sell and deliver to him said [*describe the property*] for the sum of . . . . . dollars, which said M. . . . N. . . . had agreed to pay therefor; that the said defendant was duly notified of said last named contract of resale at the time of the making of said agreement of sale between plaintiff and defendant, and knew that the plaintiff purchased said property in order to fulfill his said contract with said M. . . . N. . . . That said property was not obtainable in the open market at [*place of delivery*] at the time the same was to be delivered to plaintiff and not prior to the . . . day of . . . . ., 19. ., and that by reason of the defendant's said failure to deliver the same to plaintiff as agreed the plaintiff suffered the loss of his profits upon such resale, to-wit, the sum of . . . . . dollars.

### 1200. Allegation of refusal to perform by defendant, excusing plaintiff's failure to offer to receive and pay.

[*If defendant notified plaintiff prior to time for delivery that he would not perform, the fact may be thus alleged*]:

That prior to the time for the performance of said contract by defendant, the said defendant notified the plaintiff that he would not deliver the said [*describe property*] or any part thereof, and that the plaintiff in reliance upon said notice did not offer to receive or pay for said property and alleges that

he was excused from making any such offer by reason of said notice.

**1201. Against seller of stock for failure to deliver.**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., this plaintiff and defendant entered into an agreement [in writing, subscribed by the defendant, *or* by the agent of the defendant, duly authorized thereto, whereby it was mutually agreed between them] that the defendant should sell and deliver to the plaintiff at such time, within . . . . days thereafter, as the plaintiff should elect [*or*, that the defendant then sold and would at such time, within . . . . days thereafter, as the plaintiff should elect, deliver to him] . . . . shares of the capital stock of the X. . . . Y. . . . Company, and that the plaintiff should pay him therefor . . . . . dollars.

II. That the plaintiff duly performed all the conditions thereof on his part. [*Or*: II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., this plaintiff duly tendered to the defendant said sum of . . . . . dollars, and demanded of the defendant that he deliver said . . . . shares of stock to the plaintiff.]

III. That the defendant refused to deliver the same; to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1202. Seller against buyer for refusal to receive goods sold.**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . . the plaintiff and defendant entered into an agreement in writing [subscribed by the defendant, *or* by the agent of the defendant, duly authorized thereto] of which the following is a copy: [*copy of the contract, or allege its effect, as in preceding forms*]

II. That the plaintiff duly performed all the conditions of said contract on his part, and was, on the . . . . day of . . . . ., 19. . ., [*the day on which delivery was to be made*] ready and willing to deliver the [*goods*] therein mentioned, and on said day, at . . . . ., duly tendered the same to the defendant.

III. That the defendant refused to accept said goods, and to pay for them pursuant to his agreement, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.



**1203. The same, on a contract made by a broker.**

I. That on the . . . . day of . . . . ., 19.., the plaintiffs and the defendants entered into an agreement in writing, by the hand of M. . . . N. . . . a broker duly authorized to make the same, both on behalf of the plaintiffs and of the defendants, of which the following is a copy: [*copy of bought and sold note*].

II. That at the time of making said contract, the defendants paid to the plaintiffs the sum of . . . . . dollars mentioned therein.

III. That the plaintiffs were, at all times within said . . . . days, ready and willing to deliver the [*goods*] therein mentioned to the defendants, and receive the balance of the price therefor, and in all respects to comply with the terms of said contract on their part, and that within the . . . . days mentioned in said contract, to-wit, on the . . . . day of . . . . ., 19.., at . . . . ., they duly tendered the said [*goods*] to the defendants, and demanded payment of the balance of the price thereof.

IV. That the defendants refused to receive said [*goods*] or pay the balance of the price therefor, to the damage of the plaintiffs . . . . . dollars.

WHEREFORE, etc.

**1204. Seller against buyer for refusal to execute note.**

I. That on the . . . . day of . . . . ., 19.., at . . . . ., this plaintiff sold and delivered to the defendant, merchandise [*describing same*] of the value of . . . . . dollars.

II. That the defendant then and there promised to give the plaintiff therefor his negotiable promissory note on that day [*or, on the . . . . day of . . . . ., 19.., or, on demand, or, within a reasonable time thereafter*] dated that day [*or, dated on the . . . . day of . . . . ., 19..*] for the said sum of . . . . . dollars, payable in . . . . months from said date.

III. That on the . . . . day of . . . . ., 19.., at . . . . ., the plaintiff duly demanded such note from the defendant, but the defendant refused [*or, that although a reasonable time for the delivery of such note had elapsed before the commencement of this action, yet the defendant has neglected*] to deliver such note to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1205. Seller against buyer, after resale by auction.**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff sold to the defendant, by auction [*briefly designate the goods*] for the sum of . . . . . dollars, subject to the condition that all goods not paid for and removed by the buyer within . . . . days after the sale, should be resold, by auction, on his account, of which condition the defendant had notice.

II. That the plaintiff was ready and willing to deliver the same to the defendant, on the said day, and for . . . . days thereafter, of which the defendant had notice, and the plaintiff has otherwise duly performed all the conditions of said sale, on his part.

III. That more than . . . . days after the sale, and on or about the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant not having taken away said goods, nor paid therefor, the plaintiff resold the same by public auction for account of the defendant for . . . . . dollars, pursuant to said condition, the expenses of which resale amounted to . . . . . dollars.

IV. That no part of the deficiency of . . . . . dollars, thus arising, has been paid.

V. That by reason of the premises the plaintiff has suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1206. For breach of contract to redeliver goods, or to pay for them in a reasonable time.**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff, at the request of the defendant, delivered to him [*briefly describe the goods*] of the plaintiff, of the value of . . . . . dollars upon the condition and consideration that the defendant would purchase the same for . . . . . dollars [*or, at a reasonable price*] or return the same to the plaintiff within a reasonable time, which the defendant then and there undertook to do.

II. That the plaintiff duly performed all the conditions of said agreement on his part.

III. That although a reasonable time for the defendant to purchase and pay for said goods, or to return the same to the plaintiff had elapsed before the commencement of this

action, he has not done so, to the damage of the plaintiff  
..... dollars.

WHEREFORE, etc.

**1207. For breach of contract not to carry on rival business.**

I. That the defendant carried on the business of ....., at ....., and on or about the .... day of ....., 19.., in consideration that the plaintiff would purchase from him his store and goods for the sum of ..... dollars, and the good-will of the said business for the sum of ..... dollars, the defendant agreed with the plaintiff that he would not at any time thereafter, by himself, or partner, or agent, or otherwise, either directly or indirectly set up or carry on the business of a ..... at ....., or at any other place within the town of .....

II. That the plaintiff accordingly purchased from the defendant his said ..... for the price and at the terms aforesaid, and paid said sum of ..... dollars for the good-will of said business.

III. That the plaintiff duly performed all the conditions of said agreement on his part.

IV. That the defendant, in violation of his agreement, afterwards set up and carried on the said business of ..... at ..... and is now continuing to carry on the said business, all to the damage of the plaintiff in the sum of ..... dollars.

WHEREFORE, etc.

**1208. By seller against buyer for anticipatory breach excusing offer to perform by plaintiff.**

I. [*Allege making of contract of sale as in preceding forms.*]

II. That prior to the time appointed for the delivery of said [goods], and on or about the .... day of ....., 19.., the defendant notified the plaintiff that he would not accept said [goods] or any pay therefor, or carry out the terms of said agreement upon his part; that plaintiff was ready and willing to perform the said agreement on his part, and would have delivered said [goods] to defendant according to the terms of their said agreement but for defendant's said refusal. [*Or, that plaintiff would have been ready to per-*

form had he not been prevented from so doing by defendant's said refusal.]

III. [*Allege damages as in preceding forms.*]

WHEREFORE, etc.

**1209. By buyer against seller for anticipatory breach excusing non payment.**

I. [*Allege making of contract, as in preceding Forms.*]

II. That prior to the time for the delivery of said flour by defendant according to the terms of said agreement, defendant gave notice to plaintiff that he, defendant, would not fulfill said agreement, and would not deliver said flour or any part thereof,\* but had sold the same; that plaintiff relied upon said notice and did not provide the funds to pay for, nor make ready to receive, nor offer to receive, said flour, as he otherwise should have done.

III. [*Allege damages as in preceding forms.*]

WHEREFORE, etc.

## CHAPTER XLIV.

### COMPLAINTS FOR BREACH OF WARRANTY OF CHATTELS SOLD.

- |   |  |
|---|--|
| 1210. On a warranty of the soundness of a horse.              | 1214. On a warranty of quality of a machine.                 |
| 1211. On a warranty of the genuineness of a note.             | 1215. On a warranty resulting from a sale by sample.         |
| 1212. On a warranty of the amount due on a judgment assigned. | 1216. On implied warranty of fitness for a particular use.   |
| 1213. On a warranty of title of chattels.                     | 1217. On implied warranty of fitness of an article for food. |
|   | 1218. On a warranty of the breeding qualities of a stallion. |

#### 1210. On a warranty of the soundness of a horse.

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant offered to sell to the plaintiff a certain horse, and warranted and represented said horse to be sound, kind, and true, and gentle and quiet in harness [*or otherwise state the warranty given, in accordance with the fact*].

II. That the plaintiff, relying upon said warranty and representations, then and there purchased said horse, and paid to the defendant therefor the sum of . . . . . dollars.

III. That at the time of said warranty and sale the said horse was unsound, unkind, and untrue, and restive and ungovernable in harness, and had an infectious disease, and was utterly worthless [*or otherwise state the breach, according to the warranty given*] [and was worth . . . . . dollars less than the defendant represented and warranted] and was known by the defendant so to be; and that said horse still so remains.

IV. [*Allege special damage, if any, e. g., as follows*]: That thereafter said horse infected with said disease three other horses of the plaintiff, of the value of . . . . . dollars, by reason whereof one of said horses died, and the others were rendered worthless; and the plaintiff was put to great expense in the care of said horses and in attempting their cure.

[*Or thus*: IV. That the plaintiff, relying upon the said warranty of the said defendant, afterwards attempted to



use the said horse in harness, and the said horse being unsteady, restive, and ungovernable in harness, without the fault of the plaintiff, ran away, greatly injuring and breaking the plaintiff's wagon, and greatly injuring and bruising the plaintiff, whereby the plaintiff became sick, sore and lame, and was hindered from attending to his work as a mason, and was put to great expense in repairing his wagon and harness, and in recovering from his hurts.]

V. That by reason of the premises this plaintiff was injured and misled, to his damage ..... dollars.

WHEREFORE, etc.

### 1211. On a warranty of the genuineness of a note.

I. That on the .... day of ....., 19.., at ....., the defendant offered to pass to the plaintiff for a valuable consideration, a promissory note [*describing it, e. g., thus:* for the sum of ..... dollars, made by one M.... N.... payable to his own order, and endorsed by him, which note bore date the .... day of ....., 19.., and was payable ..... from date, *or*, a promissory note, of which the following is a copy: *copy of note*] and then and there warranted the said note to have been in fact made by the said M.... N....

II. That the plaintiff, relying upon said warranty, purchased said note of the defendant, and paid him therefor the sum of ..... dollars.

III. That in truth said note was not made by said M.... N.... but his name was forged thereto.

IV. That by reason of the premises the plaintiff was injured and misled, to his damage ..... dollars.

V. [*Or allege facts showing special damage.*]

WHEREFORE, etc.

### 1212. On a warranty of the amount due on a judgment assigned.

I. That on the .... day of ....., 19.., the defendant, for a valuable consideration, duly assigned to this plaintiff a judgment which he had, on the .... day of ....., 19.., recovered in the ..... court, county of ..... for the sum of ..... dollars, in a certain action wherein A.... B.... defendant above named, was the plaintiff, and one M.... N.... was defendant.

II. That said assignment contained a covenant on the part of the defendant, of which the following is a copy [*copy of the covenant*] [*or, that the defendant did therein and thereby warrant that there was due upon said judgment from said M.... N...., the said sum of ..... dollars, with interest thereon from the .... day of ....., 19..*]

III. That in truth, at the time of said assignment, said judgment had been paid in full [*or, in part*] to the defendant, and no part thereof [*or, only the sum of ..... dollars*] was or now is due thereon.

IV. That by means of the premises this plaintiff was injured and misled, to his damage ..... dollars.

WHEREFORE, etc.

### 1213. On a warranty of title of chattels.<sup>1</sup>

I. That on the .... day of ....., 19.., at ..... the defendant offered to sell to the plaintiff for ..... dollars, a certain pianoforte, and warranted said pianoforte to be the property of defendant.

II. That the plaintiff, relying on said warranty, purchased the same from defendant, and paid him therefor ..... dollars.

III. That in truth said pianoforte was then not the property of defendant, but belonged to one M.... N....

IV. That thereafter the said M.... N.... sued the plaintiff to recover possession of the same; and that the plaintiff gave the defendant due and timely notice of the commencement of said action, and required him to defend the same, or judgment would be suffered by failure to answer; but the defendant neglected to defend said action, and such proceedings were afterwards had therein as that the said M.... N.... recovered, by legal process, possession of said pianoforte from the plaintiff, with ..... dollars costs.

[*Where no action was brought, say:* IV. That thereafter and on or about the .... day of ....., 19.., the said M.... N.... demanded of the plaintiff that he deliver possession of said pianoforte to him, the said M.... N.... and the

<sup>1</sup>On a sale of chattels in the vendor's possession, at a fair price, there is always an implied warranty of title unless the facts and circum-

stances of the sale are such as to warrant a different conclusion. Edgerton v. Michels, 66 Wis. 124; 26 N. W. 748; 28 N. W. 408.

plaintiff was compelled to and did deliver the same to the said M.... N.... whereby it was wholly lost to the plaintiff.]

V. That by reason of the premises, the plaintiff has suffered damages in the sum of ..... dollars.

WHEREFORE, etc.

#### 1214. On a warranty of quality of a machine.

I. That at ....., on the .... day of ....., 19.., the defendant offered to sell to the plaintiff a self-binding reaper, which the defendant then and there warranted to be a first-class machine of superior quality [*or otherwise state the warranty, according to the fact*].

II. That plaintiff, relying on said warranty, and believing the same to be true, was induced thereby to purchase and did purchase the said machine from the defendant, and paid him therefor the said sum of ..... dollars.

III. That in truth and in fact said reaper was not a first-class machine of superior quality as by the defendant warranted, but the same was a second-class machine of a greatly inferior quality. [*Or otherwise state particularly the breach of warranty.*]

IV. That by reason of the premises, plaintiff sustained damages in the sum of ..... dollars.

WHEREFORE, etc.

#### 1215. On a warranty resulting from a sale by sample.

I. That on or about the .... day of ....., 19.., at ....., the defendant offered to sell [*or, to manufacture and sell*] to the plaintiff certain [*described goods or property*] and then and there produced and exhibited to the plaintiff certain samples of such [*goods or property*] so to be purchased by the plaintiff, and as an inducement to the plaintiff to make such purchase, warranted and agreed that the [*describe goods or property*] should be in all respects equal to the said samples.

II. That the plaintiff, after examining said samples, purchased of the defendant [*describe goods purchased*] relying upon the defendant's said warranty and representation, and agreed to pay therefor the sum of ..... dollars.

III. That thereafter and on or about . . . . ., 19.., the defendant delivered to the plaintiff the said [*goods*] the same being packed in bales [*or boxes or otherwise, according to the fact*], and that upon the opening and examination of one of said bales [*or boxes*] the goods therein were found to correspond with the said samples, whereupon the plaintiff, relying upon the aforesaid warranty, and upon the partial examination so made, accepted the whole of said goods and paid the defendant the agreed price therefor, to-wit, the sum of . . . . . dollars.

IV. That thereafter and without knowledge of their real condition, plaintiff sold and delivered a portion of said goods to their customers; that said customers afterwards returned the same as damaged [*or imperfect*] and refused to keep or pay for them; that thereupon the plaintiff examined the remainder of the goods so delivered by defendant, and found that no part thereof corresponded with said samples, but they were imperfect and unmerchantable, and inferior in all respects to said samples, and of no value.

V. That plaintiff immediately notified defendant of the character and condition of said goods, as aforesaid, and offered to return the same, but defendant refused to receive them or to return to plaintiff the price paid therefor.

VI. That by reason of the aforesaid, plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

### 1216. On implied warranty of fitness for a particular use.

I. That at all the times hereinafter mentioned the plaintiff was a manufacturer of [*state what*] having a manufactory at . . . . .

II. That the defendant, knowing of the manufacturing business in which the plaintiff is and was engaged, and knowing that the plaintiff desired to purchase [*state what*] to be used in said business sold and delivered to the plaintiff on or about the . . . . day of . . . . ., 19.. [*state what*] to be used by the plaintiff in the said manufacturing business, to the knowledge of the defendant, and the defendant then and there warranted the same to be in all respects fit and proper for such use, and the plaintiff paid the defendant therefor the sum of . . . . . dollars.

III. That plaintiff relied upon said warranty, and attempted to use said goods for the purpose aforesaid, but that the same when manufactured proved unsound [*or state particularly the unfitness, according to fact*], and unsuited for manufacture, in the plaintiff's said business.

IV. That as soon as said unfitness was ascertained, plaintiff notified defendant thereof, and offered to return the balance of said goods which had not theretofore been manufactured.

V. That defendant refused to accept said goods, or any part thereof, or to repay to plaintiff the purchase price thereof, to his damage . . . . . dollars.

WHEREFORE, etc.

### 1217. On implied warranty of fitness of an article for food.

I. That at the times hereinafter mentioned, defendant was a retail dealer in [*name article dealt in*].

II. That on or about the . . . . day of . . . . ., 19. . . , plaintiff purchased of defendant, for immediate consumption as food [*state articles*] which defendant knew was purchased for such purpose, and then and there warranted was fit therefor.

III. That plaintiff relied upon said warranty, and paid defendant . . . . . dollars for said meat.

IV. That said meat was not fit for use as food, but was [*describe unfitness*] and of no value to plaintiff whatever.

V. That by reason of the premises plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

### 1218. On a warranty of the breeding qualities of a stallion.

I. That on the . . . . day of . . . . ., 19. . . , defendant sold plaintiff a stallion [*describe same*] for which plaintiff paid defendant the sum of . . . . . dollars.

II. That defendant at the time of said sale represented and warranted said stallion to be a sure foal-getter.

III. That plaintiff stood said horse for the year 19. . . , and advertised the same; that said horse was patronized extensively by the public, and was put to . . . . fruitful mares



during the spring, summer and fall of 19. . . ; that none of said mares became with foal by said horse, and that said horse was utterly barren and unprolific at the time of said sale, and utterly incapable of getting any mares with foal.

IV. That plaintiff relied upon the warranty and representations so made by defendant, believing the same to be true, and purchased said horse for breeding purposes; that the defects and reasons why said horse was so unprolific and barren were of such a character that they could not be detected by a person of ordinary prudence and skill, exercising ordinary care; that said horse was unsound, and, for reasons unknown to plaintiff at the time of the sale unprolific and barren; and that plaintiff had no means, at or or before the time of said purchase of ascertaining that said horse was so unprolific.

V. That said horse was and is of no value whatever to plaintiff and plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

## CHAPTER XLV.

### COMPLAINTS FOR DECEIT

1219. General form.
1220. For fraudulently obtaining goods on credit.
1221. For fraudulently obtaining credit for another.
1222. For fraudulently misrepresenting the area of a tract of land.
1223. For fraudulent representations of title of chattels.
1224. For fraud in the quantity of chattels delivered.
1225. For fraudulent sale of goodwill of a business.
1226. For fraudulent representations as to quality of goods.
1227. The same, contract rescinded.
1228. For deceit in the exchange of property.
1229. By tenant against landlord for falsely representing a wall in an apartment house to be fireproof.
1230. For fraudulently misrepresenting value of stock in a corporation, agreed to be taken in payment for services.
1231. Complaint for concealment of disease in a horse where fraudulent means were used to deceive the purchaser.
1232. Allegation that fraud was accomplished through an agent.
1233. For false representations as to solvency made through a commercial agency.
1234. Complaint by insured against officers of insolvent insurance company, for false representations inducing plaintiffs to insure.
1235. Complaint by bank depositor against directors for fraudulent published statements inducing deposit.
1236. Complaint against officers of a corporation for issuing a false prospectus inducing purchase of stock.
1237. For misrepresenting the value of a trade and business. (Connecticut Practice Act.)
1238. The same, another form.
1239. Complaint for fraudulently inducing plaintiff to advance money for proposed corporation.
1240. Against seller of corporate stock for false representations as to the corporation.
1241. For fraudulently inducing plaintiff to sell to stranger on credit.
1242. For fraud in sale of a horse. (Connecticut Practice Act.)
1243. For false representations as to the condition, quality and value of real estate, inducing plaintiff to exchange land with a third person.

The action to recover damages resulting from false representations or deceit is a simple action of tort. The general

doctrine is that the cause of action is complete if it be shown that the representations were intended to be acted upon and were material and false representations as to matters of fact, which the maker knew or ought to have known were false, or that they were made recklessly with no knowledge on the subject, and that the injured party was entitled to and did rely upon them as true without the present means of knowledge of their falsity, and suffered legal damage by reason thereof. *Kountze v. Kennedy*, 147 N. Y. 124; 41 N. E. 414; *Krause v. Busacker*, 105 Wis. 350, 81 N. W. 406; *Bullitt v. Farrar*, 42 Minn. 8, 43 N. W. 566. In Iowa it is held that it must be shown that the defendant actually knew them to be false. *Avery v. Chapman*, 62 Iowa, 144; 17 N. W. 454. The action may arise by reason of false representations in the sale of real estate as well as in the case of the sale of personal property. Nor is it confined to cases of the sale of property. It may be said that wherever negotiations are pending between parties in contemplation of a contract and false and material representations are willfully made as an inducement to enter into the contract and the other party is in ignorance of the truth and has no present means of ascertaining the falsity of the representations and relies upon them to his damage, a recovery may be had. This is equally true whether the representations be made by the defendant himself, or if they be made by an agent within the scope of his real or apparent authority.

### 1219. General form.

I. That on the .... day of ....., 19.., the defendant falsely and fraudulently and with intent to defraud the plaintiff represented to the plaintiff that [*here state particularly the representations made*].

II. That the said representations were false in fact and known to be false by the said defendant at the time they were so made, and that in truth and in fact [*here state the truth as to the facts concerning which the representations were made*].

III. That the plaintiff relied upon said representations and was thereby induced to [*here state the act done in reliance upon the representations and the manner in which damage resulted*].

IV. That by reason of the premises the plaintiff has suffered damage in the sum of ..... dollars.

WHEREFORE, etc.

**1220. For fraudulently obtaining goods on credit.**

I. That on the .... day of ....., 19.., the defendant, with intent to deceive and defraud the plaintiff by inducing the plaintiff to sell goods to him, falsely and fraudulently represented to the plaintiff that he was solvent and worth ..... dollars over all his liabilities [*or otherwise state the representation as made*].

II. That the plaintiff relied on said representations and was thereby induced to sell [and deliver] to the defendant [*describe the goods*] of the value of ..... dollars.

III. That the said representations were false in that [*stating in what respect*] and were then known by the defendant to be so.

IV. That no part of the price thereof has been paid [*and, if the goods were not delivered*]; and that the plaintiff in preparing and shipping the said goods and in stopping them in transit expended ..... dollars] to his damage ..... dollars.

WHEREFORE, etc.

**1221. For fraudulently obtaining credit for another.**

I. That on the .... day of ....., 19.., the defendant, with intent to deceive and defraud the plaintiff, falsely and fraudulently represented to him that one M.... N.... was in good credit and safe to be trusted and worth the sum of ..... dollars over and above his debts and liabilities [*or otherwise state the representations made*].

II. That the plaintiff relied on said representations and sold and delivered [*briefly designating the goods*] of the value of ..... dollars, to said M.... N.... for a credit of .... months; but although said term has expired said M.... N.... has neglected and refused to pay for said goods.

III. That in truth, and as defendant then well knew, said M.... N.... was at the time of such representation insolvent, and not in good credit nor safe to be trusted, nor worth anything over and above his debts and liabilities [*or otherwise negative the truth of the representations*].

IV. That by means of said premises the plaintiff has wholly lost said goods, and the value thereof, to his damage . . . . . dollars.

WHEREFORE, etc.

**1222. For fraudulently misrepresenting the area of a tract of land:**

I. That the plaintiff on the . . . . day of . . . . ., 19. . ., bargained with the defendant to buy of him a piece of land of the said defendant situate in [*very briefly designate it*] which said piece of land the defendant then, with intent to deceive and defraud the plaintiff, falsely and fraudulently represented to him to contain . . . . acres, when the defendant then well knew that it contained only . . . . acres.

II. That the plaintiff relied upon said representations, and was thereby induced to and did purchase said land, and did then pay therefor to the said defendant the sum of . . . . . dollars.

III. That in truth the said piece of land did not contain . . . . acres, but only . . . . acres, and for that reason was worth only the sum of . . . . . dollars, instead of the said sum of . . . . . dollars, whereby the said plaintiff has sustained damages, to the amount of . . . . . dollars.

WHEREFORE, etc.

**1223. For fraudulent representations of title of chattels.**

I. That on the . . . . day of . . . . ., 19. . ., the defendant having offered to sell to the plaintiff a certain horse, did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that said horse was the property of defendant.

II. That the plaintiff relied on said representations and purchased said horse of the defendant and paid him therefor the sum of . . . . . dollars.

III. That in truth and as defendant then well knew, said representations were false and said horse was not the property of the defendant, but was the property of one M. . . . N. . . .

IV. That thereafter, the said M. . . . N. . . . sued this plaintiff in the . . . . . court [*or, before Q. . . . R. . . . a justice of the peace for the town of . . . . .*] to recover the



value of said horse; that plaintiff immediately notified the defendant of the pendency of said action, and requested him to defend the same, but defendant refused to do so, and although this plaintiff used [employed one O.... P.... a competent attorney of the ..... court of this state to defend and use] due diligence in the defense of said action, the said M.... N.... recovered a judgment against the plaintiff [duly given by said justice] for the sum of ..... dollars, which this plaintiff has since paid [or, which judgment still remains outstanding and in full force].

V. That by reason of the premises, this plaintiff has been misled, to his damage ..... dollars.

WHEREFORE, etc.

#### 1224. For fraud in the quantity of chattels delivered.

I. That the plaintiff, on the .... day of ....., 19.., bought of the defendant, and the defendant sold and agreed to deliver to the plaintiff [*briefly designate the merchandise and price, e. g., thus: ten tons of coal, for the price of ..... dollars per ton*] and the plaintiff then and there relied upon the said promise of the defendant to deliver to plaintiff the full quantity of coal aforesaid and paid to the defendant the full sum of ..... dollars therefor.

II. That the defendant afterwards and on the .... day of ....., 19.., intending to defraud the plaintiff, fraudulently and deceitfully delivered to him only [nine tons of coal] as and for the said quantity of [ten tons] so bargained for and sold; and pretending it so to be, though then well knowing that the [coal] so delivered did not contain the quantity bargained for and sold, but only [nine tons], to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

#### 1225. For fraudulent sale of good-will of a business.

I. That on the .... day of ....., 19.., the defendant being engaged in business as ..... and having to sell out the [stock, fixtures and] good-will of his said business to the plaintiff, did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that the said business, as theretofore conducted by defendant, was a profitable business, and that the net profits thereof, realized by the

defendant during the year ending the .... day of ....., 19.., had exceeded the sum of ..... dollars [*or otherwise, as the representations were*].

II. That this plaintiff relied on said representations and so relying purchased of defendant the [stock, fixtures and] good-will of defendant, and paid him therefor the sum of ..... dollars.

III. That in truth, and as defendant then well knew, said representations were false and said business was not and never had been a profitable business and the defendant had not realized any profits whatever from the same during the year ending the .... day of ....., 19.. [*or otherwise state specifically the particulars in which the representations were false*].

IV. That by reason of the premises this plaintiff was misled, to his damage ..... dollars.

WHEREFORE, etc.

### 1226. For fraudulent representations as to quality of goods.

I. That on the .... day of ....., 19.., the defendant offered to sell to plaintiff [*state property, as for instance: one hundred barrels of flour*] for the sum of ..... dollars, and then and there falsely and fraudulently represented that said flour was of the best quality of winter wheat flour [*or otherwise state the representations according to the fact*].

II. That the plaintiff relied on said representations and was thereby induced to purchase said flour, and paid to the defendant therefor the said sum of ..... dollars.

III. That in truth and in fact said flour was not of the best quality of winter wheat flour, which fact the defendant then well knew, but was [*here state quality*] and was not worth said sum of ..... dollars, nor worth any sum in excess of ..... dollars, and that said false representations were made by said defendant with intent then and there to cheat and defraud this plaintiff.

IV. That by reason of said false and fraudulent representations the plaintiff has suffered damage in the sum of ..... dollars.

WHEREFORE, etc.

**1227. The same, contract rescinded.**

I, II and III [*as in last preceding forms*].

IV. That immediately on discovering the falsity of said representations and on the . . . . day of . . . . ., 19.. plaintiff notified defendant that he rescinded said sale and offered to return said property to the defendant and demanded a return of the purchase price so paid, but defendant refused to receive said property or to return said purchase price or any part thereof.

WHEREFORE, etc.

**1228. For deceit in the exchange of property.**

I. That on the . . . . day of . . . . ., 19.., the plaintiff being the owner of a certain horse of the value of . . . . . dollars, and the defendant being the owner of a certain other horse, it was agreed between the parties to exchange said horses upon the following terms [*here state terms*].

II. That in order to induce the plaintiff to make said exchange the defendant falsely and fraudulently and with intent to deceive and defraud plaintiff represented to the plaintiff that the said horse of defendant was sound in every respect [*or otherwise state the misrepresentation*] whereas in truth and in fact said horse was not sound in this [*here state unsoundness*] and was only of the value of . . . . . dollars, and the defendant well knew the actual condition of said horse at the time of the making of said misrepresentation.

III. That the plaintiff relied upon said representation and was induced thereby to exchange horses with the defendant upon the terms aforesaid and to pay the said defendant the sum of . . . . . dollars in addition to the delivery of his said horse, whereby the plaintiff suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1229. By tenant against landlord for falsely representing a wall in an apartment house to be fireproof (From Matteson v. Rice, 116 Wis. 328; 92 N. W 1109).**

I. That from some time prior to the year 19.. to about . . . . ., 19.., defendant was the owner of a certain flat building, designed for residence and business purposes, in the

city of ..... state of ..... located at ..... street in said city.

II. That on or about the .... day of ....., 19.., said defendant, by and through his duly authorized agent E.... F.... leased to the plaintiff an apartment or flat in said building, known and described as Flat 27; and at all times hereinafter referred to or mentioned the said E.... F.... was duly authorized as the agent of said defendant to lease the flats of said building, including said Flat 27, on behalf of said defendant, to show the flats or apartments in said building, including the said Flat 27, to persons purposing to lease the same, and to explain to such persons the advantages, character, location and construction of said building and the apartments therein contained, with the view to inducing prospective tenants to become tenants in said building.

III. That in or about the year 19.., and prior to the leasing of said Flat 27 by the plaintiff, said defendant informed said E.... F.... that the southeast wall of said flat building, the same being a partition or dividing wall between said flat building and a large store building, was a fire-proof wall, and that in case of fire originating in the said store building adjoining said flat building the flats in said flat building would be secure from fire by reason of the fact, as represented, that said wall was fire-proof; that said defendant so informed said E.... F.... and represented to him that the said wall was fire-proof, well knowing that he would, and intending that he should, communicate such information to persons purposing to lease flats or apartments in said flat building, and intending that he should use such information to induce such persons to lease such flats and become his [defendant's] tenants in said building.

IV. That at and before the time when he leased said Flat 27 as aforesaid, the plaintiff was shown the said flat by said E.... F...., acting for and on behalf of the said defendant, and for the purpose of inducing him [plaintiff] to lease said flat represented to him that the said southeast wall of said flat building was a fire-proof wall, and that in case of fire originating in the said store building the flats in said flat building, including said Flat 27, would be secure from fire by reason of the fact, as represented, that said wall was fire-proof; that the plaintiff, relying upon the representation of said E.... F.... that said wall was fire-proof, and believing

the same to be true, was induced to lease said Flat 27, and did lease the same at the time aforesaid, by reason of said representation; that the plaintiff, immediately after leasing said flat, as aforesaid, entered into possession of said flat and continued to occupy the same for office and residence purposes under said lease and as the tenant of said defendant until on or about the . . . . day of . . . . ., 19. . ., when the said flat building, including said Flat 27, was destroyed by fire, as hereinafter stated.

V. That on or about said . . . . day of . . . . ., 19. . ., a fire originating in said store building adjoining said flat building, and separated therefrom by said alleged fire-proof wall, quickly extended into and was communicated to the said flat building, and the same, including said Flat 27, then occupied by plaintiff as the tenant of said defendant as aforesaid, was completely destroyed by said fire; that at the time when the said flat building was so destroyed by fire, this plaintiff had in said Flat 27, occupied by him as aforesaid, as appurtenant to the uses and purposes for which the said flat was rented, a large quantity of personal property belonging to him, an itemized statement of which, with the value thereof, is hereto annexed, marked Exhibit A, and made a part hereof, all of which, without the fault of this plaintiff, was wholly destroyed by said fire, and totally lost to this plaintiff.

VI. That notwithstanding the statements and representations of the said defendant to the said E. . . . F. . . . as aforesaid to the effect that the wall dividing or separating said flat building from said store was a fire-proof wall, and that the flats in said flat building would be secure from fire originating in said store building, and notwithstanding the statements and representations of the said E. . . . F. . . . as aforesaid to the same effect, the said wall was not in fact a fire-proof wall and the said flats were not at the time of said statements and representations and never were protected from or secure from fire originating in said store building, or from the effects thereof, and there never was at any time a fire-proof wall dividing said store building and said flat building, or between the same; all of which, as this plaintiff is informed and believes, was, at the times when said statements and representations were made and at all other times well known to said defendant; that by reason of the situation of said



flat building in relation to said store building, and by reason of the character of said last mentioned building and the purposes for which the same was designed to be used, the danger from fire to said flat building was greatly increased, rendering the said flat building, in the absence of a fire-proof wall, such as was represented to this plaintiff as existing as aforesaid, very liable to destruction by fire and by reason thereof dangerous and undesirable as a place of residence or for business purposes.

VII. That, as this plaintiff is informed and believes, the statements and representations made by said defendant to said E. . . . F. . . . to the effect that said wall was a fire-proof wall and that said flats would be protected thereby from fire originating in said store as aforesaid, were made by the said defendant fraudulently and with intent that the same should be communicated to persons desiring or purposing to lease said flats, and with intent to deceive such prospective tenants and persons leasing the said flats, among whom was this plaintiff.

VIII. Plaintiff further alleges, upon information and belief, that had there been a fire-proof wall dividing or separating said flat building from said store building, as represented by said defendant to said E. . . . F. . . . and by said E. . . . F. . . . on behalf of said defendant to this plaintiff, the said flats would have been protected from the fire which originated in said store building as aforesaid, and that the said property of this plaintiff would not have been by said fire destroyed.

IX. Plaintiff further alleges that by reason of the absence of such fire-proof wall and by reason of the false and fraudulent representations of the defendant the plaintiff suffered loss and sustained damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1230. For fraudulently misrepresenting value of stock in a corporation, agreed to be taken in payment for services (See *Atwill v. LeRoy*, 4 Abb. Pr. 438).**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant having offered to the plaintiff that he would assign and transfer to him . . . . shares of the par value of . . . .

dollars each, of the capital stock of the M.... N.... company, a corporation, incorporated under the laws of ..... and doing business in ..... upon consideration that the plaintiff should render service [by himself and his servants] in ..... [*state briefly the nature of the services agreed to be rendered*] did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that said stock was of the market value of ..... dollars and that defendant had paid all charges, calls and assessments laid or to be laid upon said shares by said company or the trustees or directors thereof [*or otherwise, as the false representations were*].

II. That the plaintiff, relying upon said representations, then and there agreed with the defendant to render [by himself and his servants] all necessary services that should be required by the defendant in said, etc., to the value, at the market prices for such services of ..... dollars [*or otherwise state fully the nature and the value of the services agreed to be rendered*] and thereafter proceeded to and did render [and cause to be rendered] said services [*state facts showing how far the contract was performed by plaintiff*].

III. That in truth, and as defendant then well knew, the said stock was not then of the market value of ..... dollars; but on the contrary, the said company was then insolvent and the stock worthless and unsalable in the market; and the defendant had not paid all charges, calls and assessments laid upon said shares, but, on the contrary, a special assessment of .... per cent on the par value of said shares had been theretofore duly imposed upon them by the directors of said company, which assessment had not been paid by defendant, but then remained [and still remains] a charge upon said shares [*or otherwise state specifically the particulars in which the representations were false*].

IV. That by reason of the premises the plaintiff has been misled, to his damage ..... dollars.

WHEREFORE, etc.

**1231. Complaint for concealment of disease in a horse where fraudulent means were used to deceive the purchaser.**

I. That on the .... day of ....., 19.., the defendant owned a certain horse which had theretofore contracted and

then had a certain disease called . . . . . which rendered it of no value, which fact defendant well knew but of which the plaintiff was ignorant.

II. That on said last named day the defendant offered to sell said horse to the plaintiff and for the purpose of inducing the plaintiff to purchase the same the defendant falsely and deceitfully used certain preparations and applications by which said horse was made to appear to be sound and well; by which means the plaintiff relying upon such appearance was induced to and did purchase said horse of defendant and pay him . . . . . dollars therefor without warranty, believing said horse to be sound and well, whereas in truth and in fact said horse was unsound as aforesaid and of no value.

III. That plaintiff has suffered damage by reason of the premises in the sum of . . . . . dollars.

WHEREFORE, etc.

### 1232. Allegation that fraud was accomplished through an agent.<sup>1</sup>

That on or about the . . . . day of . . . . ., 19 . . ., one R . . . . S . . . . was the agent of the defendant duly authorized to act for and on behalf of said defendant in respect to the business hereinafter named; and that on the said day the said R . . . . S . . . . in his said capacity as agent for the defendant and for the purpose of inducing the plaintiff to [*here state the purpose, as for instance, to purchase a certain horse the property of the defendant*] falsely and fraudulently represented to the plaintiff [*here state representations made*].

### 1233. For false representations as to solvency made through a commercial agency.

I. That on or about the . . . . day of . . . . ., 19 . . ., the defendant falsely and fraudulently stated to a certain mercantile agency, viz. [*name agency*] that [*here state representations made*] with intent thereby to procure credit from the

<sup>1</sup> Where the representations are made by defendant's agent within the scope of his duty it is entirely sufficient to charge that the defendant made them, and proof that they were made by an agent

is admissible under this general allegation. If it is desired, however, to make the charge more specific some such words as these may be properly used.

plaintiff and other merchants, and to cause them to believe that he was entirely solvent and able to pay for such goods as he might buy, whereas in truth and in fact said defendant did not then [*here negative representations*] and that said defendant then knew said representations to be false.

II. That said representations were thereafter communicated to the plaintiff in the due and usual course of business as the defendant intended they should be, and that defendant relied thereon and was thereby induced to and did sell to the defendant upon credit the following goods and merchandise [*describe goods*] of the value of . . . . . dollars.

III. That defendant has wholly failed to pay for said goods and is unable so to do, although the time of credit extended by the plaintiff has long since expired, and that the purchase price of said goods has been wholly lost to the plaintiff to his damage . . . . . dollars.

WHEREFORE, etc.

**1234. Complaint by insured against officers of insolvent insurance company, for false representations inducing plaintiffs to insure. (Sustained in Harper v. Chamberlain, 11 Abb. Pr. 234).<sup>2</sup>**

I. That these plaintiffs are, and at all the times hereinafter mentioned were, partners in business, as manufacturers of . . . . . at . . . . . under the firm name of A. . . . B. . . . & Co.

II. That in the year 19. . a company known as [*name of corporation*] was organized in this state, for the purpose,

<sup>2</sup>For a complaint for fraudulent representations as to the value of stock, whereby the plaintiff was induced to purchase it, see *Newberry v. Garland*, 31 Barb. 121; *Morse v. Swits*, 19 How. Pr. 271; *Mabey v. Adams*, 3 Bosworth, 346. In an action against promoters or officers of a corporation, for fraudulent representations as to its condition or solvency, the pleading must state what the false representation was; it must have been false, and so known to be to the defendant, and made with the intent and

with the effect of deceiving the plaintiff, and must have caused loss to him. It is not essential that the representation should be addressed directly to the plaintiff. If it were made with the intent of influencing every one to whom it might be communicated, or who might read or hear of it, the latter class of persons would be in the same position as those to whom it was directly communicated but they must have come to a knowledge of it before their purchase. *Cazeaux v. Mali*, 25 Barb. 578. See post, Chapter LXXVI.

among other things, of making insurance upon [vessels, freights, goods, wares, merchandise, specie, jewels, profits, commissions, bank-notes, bills of exchange, and other evidence of debt, bottomry and respondentia interests, and to make all and every insurance appertaining to or connected with marine risks, and risks of transportation and navigation; and to make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture, merchandise, and other property, against loss or damage by fire, and the risks of navigation and transportation].

III. That said company was pretended to be organized under the provisions of an act of the legislature of this state entitled "An Act to provide for the Incorporation of Insurance Companies."

IV. That, by the pretended charter of said company, it was provided that the business of said company should be conducted upon the plan of mutual insurance; and it was also provided that the capital of said company should be . . . . . dollars, and it was also provided that the directors of said company might unite a cash capital of not less than . . . . . nor more than . . . . . dollars, as an additional security to the insured, above the fund of . . . . . dollars, also mentioned in said charter; and it was also provided that the principal office of the company should be located in the city of New York.

V. That upon or after the organization of said company, and prior to the month of . . . . ., 19.., the defendants, and each of them, were chosen trustees or directors of said company, and accepted and entered upon office as such; and the defendants and each of them, were during said [month] and before and afterwards, trustees or directors of said company.

VI. That the defendants, as such directors or trustees of such company, fraudulently, and with the intent to induce these plaintiffs and others to make insurance with the said company, and pay them premiums for such insurances, did at many times prior to and, during the first week of said [month] falsely publish, advertise, aver, and represent to the public at large, and to these plaintiffs, and to the confidential advisers of these plaintiffs, that the capital of said company was [*a sum largely exceeding the actual capital*]; and that said company was possessed of a paid-up capital of said last-



mentioned sum; and that said company was solvent and responsible, and able to pay any losses to the amount of said last-mentioned sum; and they did fraudulently, and with like intent, prepare, and publish, and exhibit to these plaintiffs, and the confidential advisers of these plaintiffs, a form of policy containing a statement that the capital of said company was said last-mentioned sum; whereas the fact was, and these defendants well knew, that said company had never raised, and never were possessed of a capital of said last-mentioned sum in any form; and that they had never raised, and never were possessed of any cash capital exceeding . . . . . dollars; and that the said company never did raise a capital in any form of the value of even . . . . . dollars.

VII. That these plaintiffs, confiding in the representations aforesaid made to them by the defendants, and confiding in the general reputation of said company, produced by the representations aforesaid made by defendants to the public *at large*, and being further advised thereto by the confidential advisers of these plaintiffs, who were misled by the representations aforesaid made to them by the defendants, and believing, in consequence of the premises, that the said company was possessed of an actual capital of . . . . . dollars, paid in or secured in some of the ways prescribed by the provisions of the act of 1849, hereinbefore referred to, were induced to enter into a contract with said company for an insurance, as hereinafter stated, upon the material, stock, fixtures, and other property of these plaintiffs, used by them in their business, for one year from the . . . . day of . . . . ., 19..; and these plaintiffs, confiding and believing as aforesaid, were induced by the premises to pay, and on or about the . . . . day of . . . . ., 19.., did pay to the said company, and to the defendants as directors or trustees thereof, the sum of . . . . . dollars as premium upon such insurance; and were induced by the premises to make said insurance with said company, instead of making it with other companies, of which there then were a great number, solvent, responsible, and willing to make such insurance on the property described in said policy.

VIII. That the said company did, on the . . . . day of . . . . ., 19.., execute and deliver to these plaintiffs, their policy of insurance, a true copy whereof is hereto annexed,

marked Exhibit A, whereby the said company, in consideration of . . . . . dollars, to them paid by these plaintiffs, the receipt whereof was thereby acknowledged, did insure these plaintiffs against loss or damage by fire, to the amount of . . . . . dollars, on their [printing and book materials, stock paper, stereotype plates, fixtures, printed books, and steam-engine and machinery] contained in the premises in the city of . . . . . described in said policy.

IX. That on the . . . . day of . . . . ., 19.., the said [insured property] described in said policy of insurance, were by misfortune, and without fraud or evil practice, damaged, consumed, and lost by fire, not happening by means of any invasion, insurrection, riot, or civil commotion, or any military or usurped power; and that, by the said fire, the said insured sustained loss and damage, in and by the consuming, damage, loss, and destruction of said property, to the amount of . . . . . dollars, estimating the said loss at the true and actual value of the property at the time of the happening of said fire.

X. That, at the time of said fire, there were other insurances effected by these plaintiffs, as permitted by said policy, on the same property, to the aggregate amount of . . . . . dollars only.

XI. That at the time of the making of said insurance, and from then until the fire above mentioned, these plaintiffs had an interest in the said property insured, as the owners thereof, and they were, and now are, the lawful owners and holders of the claim arising upon said policy and loss against the said company.

XII. That these plaintiffs duly fulfilled all the conditions of said policy of insurance upon their part, and did forthwith, after the said loss and damage by fire, give notice thereof to the said company, and did as soon thereafter as possible, and on the . . . . day of . . . . ., 19.., deliver to said company a particular statement of said loss and damage, subscribed by A. . . . B. . . . one of these plaintiffs, and duly verified by his oath; and these plaintiffs, on the . . . . day of . . . . ., 19.., and at divers other times, duly demanded from said company payment of the sum of . . . . . dollars and interest, due to them upon said policy by reason of said loss.

XIII. That said company have hitherto always neglected and refused to pay said loss; and these plaintiffs brought an

action in the . . . . . court of . . . . . county against said company, to recover upon said policy for their loss sustained as aforesaid, and were put to great expense therein, and on the . . . . day of . . . . ., 19.., recovered judgment therein for the full amount of their claim, and interest, and costs, to-wit, . . . . . dollars, and caused execution to be issued thereon; which execution was, on the . . . . day of . . . . ., 19.., returned wholly unsatisfied.

XIV. That by reason of the premises, these plaintiffs have sustained great damage, to-wit, . . . . . dollars.

WHEREFORE, etc. [*demand judgment for money damages and costs*].

**1235. Complaint by bank depositor against directors for fraudulent published statements inducing deposit. (Adapted from Solomon v. Bates, 118 N. C. 311; 24 S. E. 478, 746).**

I. That the defendants are and were at the times hereinafter named directors of the . . . . . Bank, which was and is a banking corporation organized and existing under the laws of the state of . . . . .

II. That said corporation commenced to do a general banking business at the city of . . . . . in said state on or about the . . . . day of . . . . ., 19.., and thereafter continued in said business under the management of the defendants as directors, and became insolvent to the knowledge of the defendants in or about the month of . . . . ., in the year 19..

III. That notwithstanding such insolvency, the said bank continued to transact its said banking business under the management and control of said defendants, and the said defendants caused to be made and published annual statements of the condition of said bank showing the said bank to be solvent, its capital unimpaired, and that it possessed a surplus, and particularly that the said directors caused a certain semi-annual statement of the condition of said bank to be made and sworn to by the president and cashier on or about the . . . . day of . . . . ., 19.., and caused the same to be published upon said day in two certain newspapers of large circulation in the said city of . . . . ., to-wit [*name newspapers*] that at the time of the making and publishing of said last-named statement the said bank

was in fact totally insolvent and unable to pay its obligations, to the knowledge of said defendants, but that notwithstanding that fact the said statement showed said bank to be solvent, its capital unimpaired, and that it had a net surplus of . . . . . dollars. That the said statement was so fraudulently made and published by the defendants for the purpose of establishing the credit of said bank, and to induce the public to deal therewith and deposit money therein.

IV. That the plaintiff, being ignorant of the real condition of said bank, saw and read the said statement and believed the same to be true, and relying thereon deposited in said bank in the month of . . . . ., 19.., the sum of . . . . . dollars, and allowed the said sum to remain therein. That the said bank closed its doors and ceased to do business on the . . . . day of . . . . ., 19.., that its entire property has been sequestered and its business closed up, and that the plaintiff has been paid upon his said demand the sum of . . . . . dollars and no more, and that there is yet due to the plaintiff upon said claim the sum of . . . . . dollars, with interest from . . . . ., 19.., which sum has been wholly lost to the plaintiff.

WHEREFORE the plaintiff demands judgment against the defendants for the sum of [*amount lost*] with interest from . . . . ., 19.., with costs.

**1236. Complaint against officers of a corporation for issuing a false prospectus inducing purchase of stock.**

I. That the X.... Y.... Company is and was at the times hereinafter stated, a corporation organized and existing under the laws of the state of . . . . . for the purpose of [*state business*] and that the defendants are and have been since the month of . . . . ., 19.., directors of the said corporation.

II. That the said defendants, in the month of . . . . ., 19.., for the purpose of inducing the public to purchase stock in said company, prepared and caused to be printed and circulated among the public at . . . . . [*or published in the Q.... Z.... a newspaper of wide circulation in the city of . . . . .*] a certain prospectus or statement, signed by them, of which a true copy is hereto attached and made part hereof,

marked Exhibit A [*or set forth the exact representations contained in the statement*].

III. That the plaintiff had no knowledge as to the truth of the statements contained in said prospectus, and that he received a copy thereof [*or read the same in said newspaper*] on or about the . . . . day of . . . . ., 19. . ., and believed, and relied on the truth of the representations therein contained, and so relying, and not otherwise, the plaintiff was thereby induced to and did on the . . . . day of . . . . ., 19. . ., purchase of said company . . . . shares of its capital stock, and paid therefor . . . . . dollars.

IV. That the said representations and statements contained in said prospectus were each and all false, and that the defendants knew that the same were false when they issued the same as aforesaid. That the said company did not at that time own a valuable copper mine, and did not [*here negative specifically each of the false statements complained of*] but that [*here state the truth with regard to the various representations*].

V. That said company is now insolvent, and that the stock thereof, including plaintiff's said stock, is worthless [*or, worth not exceeding . . . . . dollars per share*] and that plaintiff has suffered damage by reason of his said purchase to the amount of . . . . . dollars.

WHEREFORE, plaintiff demands judgment for said sum of . . . . . dollars, with interest from . . . . ., 19. . ., and costs.

**1237. For misrepresenting the value of a trade and business (Conn. Pr. Act form 133).**

I. That on . . . . ., 19. . ., defendant kept a circulating library and carried on the trade of bookseller and stationer in the building known as No. . . . ., . . . . . street, in the city of . . . . ., and was possessed of a lease of said building for the term of . . . . years from . . . . ., 19. . ., and then offered to sell to plaintiff his interest in said unexpired lease and said library and the stock, fixtures, and good-will of said trade, and then pretended and represented to plaintiff that the profits of said circulating library, as theretofore conducted by defendant, had been at the rate of . . . . . dollars a year; that there were . . . . subscribers to said library; and that



said building and trade, as theretofore conducted by defendant, produced profits at the rate of . . . . . dollars a year.

II. That plaintiff believed said representations of defendant to be true, and was induced thereby to purchase, and did purchase of defendant said lease, library, stock, fixtures, and good-will, and paid him . . . . . dollars therefor.

III. That in fact the profits of said library had not been over . . . . . dollars a year for more than five years prior to said sale and the number of subscribers thereto had not been over . . . . a year, and said building and trade, as conducted by defendant, had not produced profits of more than . . . . . dollars a year.

IV. That defendant made said false representations to plaintiff well knowing them to be false, and with intent to induce him to make said purchase, and to defraud him.

V. That said lease, library, stock, fixtures and good-will were worth less than . . . . . dollars when so purchased by plaintiff and he has incurred great trouble and expense in carrying on and endeavoring to sell the same.

VI. That by reason thereof plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

### 1238. The same, another form.

I. That on or about the . . . . day of . . . . ., 19.., the defendant caused to be inserted in the . . . . . newspaper an advertisement in which he offered for sale the lease, fittings, goodwill and stock in trade of a [*name the business*] and atated that the same was doing a business of . . . . . dollars per year.

II. That the plaintiff having seen the advertisement applied to the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's said business with the lease, fixtures, fittings, stock in trade, and goodwill, during which negotiations the defendant stated to the plaintiff that the business was a steadily increasing one, and that it was a business of more than . . . . . dollars per month.

III. That on the . . . . day of . . . . ., 19.., the plaintiff believing the said statements of the defendant to be true,

agreed to purchase the said business and property from the defendant for . . . . . dollars, and that on the . . . . day of . . . . ., 19.., the purchase was completed, an assignment of the lease executed, and the purchase-money paid, and on the same day the plaintiff entered into possession.

IV. That plaintiff soon afterwards, and on the . . . . day of . . . . ., 19.., discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business, and at each of those times and for a long time before, it had never been a business of more than . . . . . dollars a month and the said business and property was not of the value of . . . . . dollars, and was not worth to exceed . . . . . dollars.

V. That the defendant made the representations herein before mentioned well knowing them to be false and fraudulently, with the intention of deceiving and inducing the plaintiff to make the said purchase on the faith of them.

VI. That by reason of the premises the plaintiff has suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

### 1239. Complaint for fraudulently inducing plaintiff to advance money for proposed corporation.

I. [*Allege that the defendant represented to the plaintiff that he was about to incorporate his business with a capital stock of . . . . . dollars and that it was necessary to have at once the sum of . . . . . dollars, and that if plaintiff would furnish that sum . . . . shares of the capital stock of said proposed corporation would be issued to him therefor.*]

II. [*Allege that the defendant represented that he had property invested in said business to the amount of . . . . . dollars, and that he himself would take and subscribe for all of the stock of the corporation except that which was to be taken by plaintiff as aforesaid.*]

III. [*Allege that such representations were false and made by defendant with the intention to deceive and defraud the plaintiff.*]

IV. [*Allege that the plaintiff, relying upon such false representations, paid to the defendant the sum of . . . . . dollars.*]

V. [*That the defendant did not organize or cause to be*

*organized such corporation, was not worth the said sum of . . . . . dollars and did not subscribe for stock in said corporation in any sum whatever.]*

VI. [*That the defendant fraudulently converted the amount so advanced by the plaintiff to his own use without the knowledge or consent of the plaintiff, and is now indebted to the plaintiff in the amount of . . . . . dollars, with interest from . . . . ., 19..]*

VII. [*That the plaintiff has demanded repayment of the said sum but no part has been repaid.]*

WHEREFORE, etc.

**1240. Against seller of corporate stock for false representations as to the corporation.**

I. That on or about the . . . . day of . . . . ., 19.., the defendants falsely and fraudulently represented to the plaintiff that a certain corporation [*naming it*] owned the exclusive right to sell in the counties of . . . . . a certain patented invention [*naming the same*] [*or name other representations made according to the fact*].

II. That plaintiff relied upon said representations, and was induced thereby to and did subscribe for . . . . . shares of the capital stock in said company, and paid defendants therefor . . . . . dollars, in a negotiable note to the order of defendants, which was indorsed and delivered by defendants before maturity to a *bona fide* holder, and plaintiff was compelled to and did pay said note.

III. That said representations were false, and were known to defendants to be false when made; that [*specifically negative each representation and allege the true condition*].

IV. That said stock so purchased by the plaintiff was and is worthless and that by reason of the premises plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

**1241. For fraudulently inducing plaintiff to sell to stranger on credit.**

I. That on or about the . . . . day of . . . . ., 19.., at . . . . ., the defendant falsely and fraudulently represented to the plaintiff that one E. . . . F. . . . was worth the sum of

..... dollars over and above his debts and liabilities [*or otherwise state the representation as the fact is*].

II. That the plaintiff, relying on said representations and believing the same to be true, between the .... day of ..... and the .... day of ....., 19.., at ..... sold and delivered [*briefly designate the goods*], of the value of ..... dollars, to said E.... F.... upon a credit of ..... months; but although said term has expired, said E.... F.... has wholly failed to pay for said goods.

III. That in truth, said E.... F.... was, at the time of such representations and sale and delivery, wholly insolvent, [*or otherwise negative the representations made according to the fact, and state the true conditions.*]

IV. That by reason of the premises the plaintiff has wholly lost said goods and the value thereof and has suffered damage in the sum of ..... dollars.

WHEREFORE, etc.

**1242. For fraud in sale of a horse (Conn. Pr. Act form 132).**

I. That on ....., 19.., plaintiff bargained with defendant for the purchase of a horse belonging to defendant, and defendant, to induce plaintiff to buy said horse and to pay ..... dollars therefor, declared to plaintiff that said horse was sound in wind and limb, and free from any defect whatever.

II. That plaintiff, believing said statements to be true and induced thereby, bought said horse of defendant and paid him ..... dollars therefor.

III. That defendant made said statements knowing them to be false, with intent thereby to induce plaintiff to make such purchase and to defraud him.

IV. That said horse was then unsound, and then and for a long time before, had an incurable disease called the glanders.

V. That said horse is unfit for use and of little value, and plaintiff has expended ..... dollars in feeding and taking care of him and in endeavoring to cure him of said disease.

VI. That by reason thereof plaintiff has been damaged ..... dollars.

WHEREFORE, etc.

1243. For false representations as to the condition, quality and value of real estate inducing plaintiff to exchange land with a third person.

[See complaint sustained and reported in substance in *Busterud vs. Farrington*, 36 Minn. 320; 31 N.W. 360.]



## CHAPTER XLVI.

### COMPLAINTS FOR CONVERSION OF PERSONAL PROPERTY.

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|---|---|
| 1244. By owner for conversion, where defendant wrongfully takes possession. | 1255. Against pledgee for conversion of property pledged. (Connecticut Practice Act.) |
| 1245. The same, where defendant rightfully obtained possession.             | 1256. Against purchaser of timber cut by trespasser.                                  |
| 1246. For conversion, against purchaser with notice.                        | 1257. By common carrier having lien for transportation charges.                       |
| 1247. The same, by assignee after conversion.                               | 1258. By vendor against fraudulent vendee.  |
| 1248. The same, by an administrator.  | 1259. Against attorney for conversion of funds given him for investment.              |
| 1249. For conversion of goods bought under fraudulent representations.      | 1260. By pledgor against pledgee for conversion of collateral after payment of loan.  |
| 1250. For conversion of a promissory note.                                  | 1261. The same, after tender of amount due.   |
| 1251. For conversion of a bond, by assignee after conversion.               | 1262. By one part owner against another part owner.                                   |
| 1252. By one tenant in common against his cotenant.                         | 1263. For conversion by custodian.  |
| 1253. By assignee of one tenant in common against his cotenant.             | 1264. Against borrower, for conversion of thing borrowed.                             |
| 1254. Against sheriff for property taken on process against a third person. | 1265. By lessor against lessee of chattel after expiration of term.                   |
|   | 1266. The same, upon breach of condition in lease.                                    |

#### 1244. By owner for conversion, where defendant wrongfully takes possession.

I. That before and until the time hereinafter mentioned the plaintiff was the owner and in possession of [*very briefly designate the goods, or where he was not in possession, say: was entitled to the immediate possession of, designating the goods, or attach and refer to schedule of goods*], of the value of . . . . . dollars.

II. That on the . . . . day of . . . . ., 19.., at . . . . . the defendant unlawfully took and converted the same to his own use, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

**1245. The same, where defendant rightfully obtained possession.**

I. That before and until the times hereinafter mentioned the plaintiff was the owner and entitled to the immediate possession of [*designating the goods*] of the value of . . . . . dollars.

II. That on the . . . . day of . . . . ., 19.., the plaintiff delivered the said goods to the defendant for safekeeping and upon the defendant's promise to return the same to the plaintiff upon demand [*or otherwise state the facts showing the lawful possession thereof by defendant*].

III. That on or about the . . . . day of . . . . ., 19.., the plaintiff duly demanded of the defendant that he return said goods to the plaintiff<sup>1</sup> but that the defendant refused and still refuses to return the same and has wrongfully and unlawfully converted the same to his own use to the plaintiff's damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1246. For conversion, against purchaser with notice.**

[*I and II as in preceding forms substituting for the defendant the name of the original wrongdoer.*]

III. That said [*original wrongdoer*] transferred and delivered the aforesaid [*name the property*] to the defendant, who well knew the premises and that the said property had been as aforesaid wrongfully taken and carried away from plaintiff's possession by said [*original wrongdoer*] and that they were the property of the plaintiff, but received the same from said [*original wrongdoer*] and thereafter wrongfully converted and disposed of the same to his own use, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

<sup>1</sup>Demand and refusal are necessary to be alleged and proven where defendant came rightfully into possession.

**1247. The same, by assignee after conversion.**

I. That before and until the times hereinafter mentioned, one M.... N.... was the owner and lawfully possessed of [*very briefly designate the goods*] [*or, was entitled to the immediate possession of, designating the goods, etc.*] of the value of ..... dollars.

II. That on the .... day of ....., 19.., at ..... the defendant unlawfully took and converted the same to his own use, to the damage of said M.... N...., ..... dollars.

III. That on the .... day of ....., 19.., said M.... N.... duly assigned to the plaintiff for value his claim against the defendant for damages for said conversion.

WHEREFORE, etc.

**1248. The same, by an administrator.**

I. [*As in last preceding form.*]

II. That on the .... day of ....., 19.., the same came into the possession of the defendant, who though on the .... day of ....., 19.., requested so to do by said M.... N.... [*or by the plaintiff*] would not deliver the same to him, but then and ever since wrongfully detained the same.

III. That thereafter and before this action [*or on the .... day of ....., 19..*], said M.... N.... died intestate, and on the .... day of ....., 19.., letters of administration upon the estate of said M.... N.... deceased were duly issued and granted to the plaintiff by the .... court of the county of ..... of this state, appointing the plaintiff administrator of all the goods, chattels and credits which were of said deceased, and that the plaintiff thereupon duly qualified as such administrator, and entered upon the discharge of the duties of his said office and is still such administrator.

IV. That by reason of the premises the said plaintiff in his capacity as administrator aforesaid has suffered damages in the sum of ..... dollars.

WHEREFORE, etc.

**1249. For conversion of goods bought under fraudulent representations.**

[*Allege the fraudulent sale as in I, II, and III of Form 1219.*]

IV. That the defendant, having so obtained from the

plaintiff the possession of said goods, unlawfully converted and disposed of them to his own use, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1250. For conversion of a promissory note (Decker v. Matthews, 52 N. Y. 313).**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the plaintiff made his promissory note, of which the following is a copy [*or*, his promissory note dated on that day, whereby he promised to pay . . . . . dollars to the order of M. . . . N. . . . . months from date] which note was made and delivered by the plaintiff to M. . . . N. . . . without consideration, and for his accommodation, and with the special purpose and agreement between the plaintiff and said M. . . . N. . . . that it should be offered by said M. . . . N. . . . to the O. . . . P. . . . Bank for discount, and the proceeds thereof, if any, should be applied by said M. . . . N. . . . to the payment of a certain other note theretofore made by the plaintiff for the accommodation of said M. . . . N. . . . , dated, etc. [*describing note*] and that otherwise it should be returned to this plaintiff.

II. That said first mentioned note was thereafter offered by said M. . . . N. . . . to the O. . . . P. . . . Bank for discount, who refused to discount the same, and returned it to the said M. . . . N. . . . whereupon the plaintiff became entitled to the possession thereof [*or state other circumstances showing failure in the intended appropriation of the note, as the fact was*].

III. That thereafter, but before the maturity of the note, the defendant W. . . . X. . . . without the knowledge or consent of the plaintiff or of M. . . . N. . . . unlawfully took said note from the possession of M. . . . N. . . . and delivered it to the defendant Y. . . . Z. . . . ; and that the defendants thereupon wrongfully converted and disposed of it to their own use, by transferring it to a purchaser, in good faith for value, before its maturity [*or*, converted and disposed of it to their own use, whereby the plaintiff was compelled to pay it], to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1251. For conversion of a bond, by assignee after conversion.**

I. That in or about the month of . . . . ., 19.., at . . . . ., one M.... N.... being the owner of a bond, a copy of which is annexed as a part of this complaint, by his agent, at the request of the defendant, deposited it with the defendant for the purpose of enabling him to ascertain the value thereof, upon an agreement between him and the said M.... N.... that on ascertaining the value he would either buy the same from the said M.... N.... and pay him the value thereof, or would return it to him upon demand.

II. That after a reasonable time for ascertaining the value thereof, and on the . . . . day of . . . . ., 19.., at . . . . ., said M.... N.... duly demanded from the defendant the said bond, or the value thereof; but the defendant, though admitting that it was in his custody or under his control, refused either to return it or to pay its value to the said M.... N.... to his damage . . . . . dollars.

III. That on the . . . . day of . . . . ., 19.., at . . . . . the said M.... N.... duly assigned to the plaintiff the said bond, together with all his right of action against the defendant and all other persons, to recover its value, or its possession, or said damages.

IV. That the value of said bond, at the time of the commencement of this action, was . . . . . dollars.

WHEREFORE, etc.

**1252. By one tenant in common against his cotenant.**

I. That at the times hereinafter mentioned plaintiff and defendant owned, as tenants in common, [*describe property*], plaintiff owning one undivided half thereof, and defendant owning the other half, the same being of the value of . . . . . dollars.

II. That on . . . . ., 19.., defendant, claiming to be the absolute owner of the whole thereof took exclusive possession thereof, and wrongfully sold and converted the whole thereof to his own use, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.



**1253. By assignee of one tenant in common against his cotenant.**

I. That at the times hereinafter mentioned the plaintiff was the owner of a one-eighth undivided interest in and to the following described property [*insert description*].

II. That defendant was then and there the owner of a three-fourths undivided interest in and to said logs and one A.... D.... was the owner of a one-eighth undivided interest therein.

III. That on or about the .... day of ....., 19.., defendant, without the consent of either said A.... D.... or plaintiff, wrongfully sold all of said property as his own property and received all the avails of said sale, and then and there wrongfully converted the said property and the avails thereof to his own use.

IV. That said property was then of the value of ..... dollars.

V. That before the commencement of this action the said A.... D.... duly sold, assigned and set over to plaintiff, all his right, title and interest in and to said property, and the avails thereof, and his claim against defendant for said wrongful conversion, and plaintiff now owns and holds the same.

WHEREFORE, etc.

**1254. Against sheriff for property taken on process against a third person.**

I. That at the times herein mentioned defendant was and still is the sheriff of ..... county, state of .....

II. That at all such times plaintiff was and still is the owner and entitled to the immediate possession of [*describe goods*] of the value of ..... dollars.

III. That on ....., 19.., defendant, as such sheriff, wrongfully levied upon and took said property under process directed against the property of one E.... F.... and wrongfully sold the same under said process, to plaintiff's damage ..... dollars.

IV. That on ....., 19.., plaintiff duly served upon defendant an affidavit of his title and right to the possession of said property, stating its value and the ground of such title and right, as provided by law, and demanded of de-

defendant that he deliver said property to plaintiff, but defendant refused, and still refuses to do so.

WHEREFORE, etc.

**1255. Against pledgee for conversion of property pledged (Conn. Pr. Act form 245).**

I. That on . . . . ., 19.., in consideration of a sum of money lent to plaintiff by defendant, plaintiff delivered to defendant by way of pledge for said loan, to be re-delivered to plaintiff on his paying to defendant the amount of said loan and interest, a gold watch of the value of . . . . . dollars.

II. That plaintiff has repaid to defendant the amount of said loan and interest.

III. That defendant refused to deliver said watch to plaintiff on his repaying said loan and interest, and still refuses to do so.

WHEREFORE plaintiff demands judgment for . . . . . dollars damages, with costs.

**1256. Against purchaser of timber cut by trespasser.**

I. That at the times herein mentioned, plaintiff was the owner and in possession of [*describe premises*] and of the pine timber growing thereon.

II. That on . . . . ., 19.., one E.... F.... wrongfully entered said premises and cut and carried away and converted to his own use . . . . feet of said timber.

III. That on . . . . ., 19.., defendant purchased said timber from the said E.... F.... with full knowledge of plaintiff's rights therein and of said conversion by E.... F.... and on . . . . ., 19.., at . . . . ., wrongfully refused to deliver the same to plaintiff on demand.

IV. That the value of said timber at the time it was so converted by defendant was . . . . . dollars.

WHEREFORE, etc.

**1257. By common carrier having lien for transportation charges.**

I. That at all the times hereinafter mentioned plaintiff was, and now is, a common carrier of goods for hire between . . . . . and . . . . .

II. That on or about the .... day of ....., 19.., one E.... F.... delivered to plaintiff as such common carrier, at ....., certain [*describe goods*] for transportation and delivery to the defendant at .....

III. That thereupon plaintiff caused said property to be transported to ....., and in so doing earned the sum of ..... dollars as and for its proper and reasonable charge for such transportation; that thereby plaintiff acquired a lien upon said goods for the amount of his said charge, and was entitled to retain possession of said goods until payment of said charge.

IV. That on or about the .... day of ....., 19.., defendant, without plaintiff's permission, and without paying it the amount of the said charge for transportation wrongfully took said property from plaintiff's possession, and converted the same to his own use, to the plaintiff's damage ..... dollars.

WHEREFORE, etc.

#### 1258. By vendor against fraudulent vendee.

I. That on or about the .... day of ....., 19.., at the city of ....., the defendant falsely and fraudulently represented to the plaintiff that he was solvent and worth the sum of ..... dollars over and above his liabilities [*or otherwise state the false representations according to the fact*].

II. That plaintiff relied on said representations, and was thereby induced to sell and deliver to the said defendant [*describe property*] of the value of ..... dollars, upon a credit of ..... months from said day.

III. That the said representations were false, and were known by the defendant to be false, and were made by him with intent to deceive and defraud the plaintiff.

IV. That thereafter the defendant, unlawfully converted and disposed of said property to his own use, to the damage of the plaintiff ..... dollars.

V. [*If plaintiff has received part payment, or securities, he must allege return, or offer to return*].

WHEREFORE, etc.

**1259. Against attorney for conversion of funds given him for investment.**

I. That at the times hereinafter named the defendant was and still is an attorney at law practicing as such at .....

II. That at ....., on or about the .... day of ....., 19.., plaintiff intrusted to the defendant, as such attorney, the sum of ..... dollars, belonging to plaintiff, upon defendant's promise to invest the same upon and secure the same by bond and mortgage upon real estate in ..... for this plaintiff [*or otherwise state the agreement as the fact may be*].

III. That the defendant has converted and disposed of the said money to his own use, and has refused to repay the same to this plaintiff, upon demand heretofore made by this plaintiff, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1260. By pledgor against pledgee for conversion of collateral after payment of the loan.**

I. That the plaintiff at the times hereinafter named was and still is the owner and in possession of [*describe pledged securities*] which were and are of the value of ..... dollars.

II. That on or about the .... day of ....., 19.., defendant loaned the plaintiff ..... dollars, and plaintiff delivered to defendant as security therefor the aforesaid [*describe securities*].

III. That said loan was duly paid off by plaintiff to the defendant at maturity.

IV. That on or about the .... day of ....., 19.., at ..... plaintiff demanded of defendant the return of said securities, but defendant refused to return the same or any part thereof, and as plaintiff is informed and believes, he has converted and disposed of the same to his own use, to the damage of plaintiff ..... dollars.

WHEREFORE, etc.

**1261. The same, after tender of amount due.**

[*I and II as in last preceding form.*]

III. That when said loan became due and payable, to-wit, on the .... day of ....., 19.., plaintiff duly tendered

to defendant the amount thereof, together with an amount equal to the interest accruing thereon to said date [*allege, also, that the amount of any other proper charge has been tendered*] and demanded of defendant the return and surrender to plaintiff of said [*name the property*].

IV. That defendant refused to return or surrender the same or any part thereof, and still refuses and neglects so to do, and has converted and disposed of the same to his own use, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

### 1262. By one part owner against another part owner.

I. That at the times hereinafter named the plaintiff was the owner of an undivided one-half and the defendant the owner of the undivided one half [*or otherwise state the shares according to the fact*] of [*describe property*] and that said property was in their possession as tenants in common and was of the value of . . . . . dollars.

II. That on or about the . . . . day of . . . . ., 19.., the defendant, upon plaintiff's demand, wrongfully refused to make or permit a division of said property and claimed to be the owner of the whole thereof, and wrongfully converted the same to his own use to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

### 1263. For conversion by custodian.

I. That at the times hereinafter mentioned, plaintiff was the owner and entitled to the immediate possession of [*describe goods*] of the value of . . . . . dollars.

II. That on or about the . . . . day of . . . . ., 19.., plaintiff delivered said property to defendant, and defendant agreed to return the same upon demand.

III. That on or about the . . . . day of . . . . ., 19.., plaintiff duly demanded of the defendant that he return said property, but defendant has neglected and refused so to do, and has converted and disposed of the same to his own use, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.



**1264. Against borrower for conversion of thing borrowed.**

I. That on or about the .... day of ....., 19.., at the instance and request of the defendant, this plaintiff lent to and delivered to said defendant [*describe property*] the property of the plaintiff, which said property the defendant then and there promised to return on demand [*or state when according to the fact*].

II. That said property was worth the sum of ..... dollars.

III. That after obtaining said loan, said defendant wrongfully transferred the same to persons unknown to this plaintiff.

IV. That before the commencement of this action the plaintiff at ..... demanded of said defendant that he return said property, but defendant failed to return the same, but on the contrary has converted and disposed of the same to his own use, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1265. By lessor against lessee of chattel after expiration of term.**

I. That on or about the .... day of ....., 19.., plaintiff let to the defendant a certain [*describe chattel*] belonging to plaintiff of the value of ..... dollars, for the term of [*state term*].

II. That on the .... day of ....., 19.., said term of letting fully expired, and plaintiff became and was entitled to the immediate possession of said [*chattel*] that on said day plaintiff duly demanded of defendant the return of said [*chattel*], but defendant refused to return the same, and has converted the same to his own use, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1266. The same, upon breach of condition in lease.**

I. [*As in last preceding Form, adding thereto*]: And in consideration of said letting defendant promised to pay the sum of ..... dollars weekly for the use thereof; that it was also agreed by defendant, in consideration of said letting, that *here insert the condition the breach of which is claimed.*]

II. That on the .... day of ....., 19.. [*here allege the breach of the condition showing that plaintiff is now entitled to possession by reason of the breach.*]

III. [*Allege demand of return and refusal, conversion and damage as in preceding form.*]

WHEREFORE, etc.

## CHAPTER XLVII.

### COMPLAINTS FOR INJURIES TO PERSONAL PROPERTY.

- |  |   |
|--|---|
| 1267. For unlawfully taking and carrying away plaintiff's goods, (trespass).                                       | 1270. For malicious injury to property.                       |
| 1268. The same, the plaintiff having regained possession before suit brought.                                      | 1271. Against city or county, for damage done by mob or riot. |
| 1269. By mortgagee entitled to possession against sheriff for selling chattels on execution against the mortgagor. | 1272. For chasing plaintiff's cattle.                         |
|  | 1273. For shooting plaintiff's dog.                           |
|  | 1274. For riding plaintiff's horse to its permanent injury.   |

#### 1267. For unlawfully taking and carrying away plaintiff's goods (trespass).

That on the .... day of ....., 19.., at ....., the defendant unlawfully took from the possession of the plaintiff, and carried away [*here briefly designate the goods*] which were then and there the property of the plaintiff of the value of ..... dollars [and still unlawfully detains the same from the plaintiff, or destroyed the same] to his damage ..... dollars.

WHEREFORE, etc.

#### 1268. The same, the plaintiff having regained possession before suit brought.

I. That on the .... day of ....., 19.., at ....., the defendants unlawfully took from the possession of the plaintiff and carried away [*here very briefly designate the goods*] the property of the plaintiff, of the value of ..... dollars, and unlawfully detained the same from the plaintiff until the .... day of ....., 19..

II. That by reason of such unlawful taking and detention of said property, the plaintiff was injured to his damage ..... dollars. [*Or, was compelled to pay, and did on the .... day of ....., 19.., at ....., pay ..... dollars to*

X.... Y.... to obtain the return of the same, and also ..... dollars for recartage and reweighing, and sustained other injury, to his damage ..... dollars.] [*Or state any other special damage sustained, such as loss of usable value.*]

WHEREFORE, etc.

**1269. By mortgagee entitled to possession against sheriff for selling chattels on execution against the mortgagor.<sup>1</sup>**

I. That on or about the .... day of ....., 19.., one M.... N.... executed and delivered to the plaintiff a chattel mortgage [of which a copy is annexed as a part of this complaint]; that the property mentioned and described in said mortgage and the schedule annexed consisted of a lithographic press, of the value of ..... dollars, or thereabouts; that said mortgage was made in good faith, and without intent to defraud creditors or purchasers, and was given to secure the payment to plaintiff of ..... dollars, with interest from the date of said mortgage, which sum was theretofore loaned by the plaintiff to said M.... N.... and which he then owed the plaintiff.

II. That the said M.... N.... is by trade or occupation a lithographer, and was at the date of said mortgage, actively engaged in business as a lithographer, and was dependent upon said business or occupation for support and a livelihood; and that the said property so mortgaged was used by the said M.... N.... in the course of said business or occupation, and was essential and requisite to him in his said business or occupation; and that said property was left and remained with the said M.... N.... to enable him to prosecute his said business.

III. That on or about the .... day of ....., 19.., a true copy of said mortgage was filed in the office of ..... in which said county, at the date of said mortgage, the said M.... N.... resided.

IV. That on the .... day of ....., 19.., and before the levy and sale hereinafter mentioned, said sum of ..... dollars, with interest, became due, pursuant to the terms of the mortgage [*or if on demand, the said sum of ..... dollars,*

<sup>1</sup> Taken from 1 Abbott's Forms, on Hull v. Carnley, 1 Abb. Pr. p. 463, Form 558, which was based 158.

with interest, was duly demanded from the said M.... N... by the plaintiff] but said M.... N.... failed to pay the same; and thereupon, pursuant to said mortgage, the plaintiff became the owner of said property, and entitled to the immediate possession and control of the same.

V. That thereafter, and on or about the .... day of ....., 19.., the defendant W.... X.... issued to the defendant Y.... Z...., sheriff of the county of ....., an execution against the property of the said M.... N....; and on the .... day of ....., 19.., the plaintiff caused a notice to be served upon said sheriff, informing him of said mortgage, and of the default in the payment thereof, and that the plaintiff claimed the property therein mentioned.

VI. That on or about the .... day of ....., 19.., regardless of said mortgage, the said sheriff wrongfully sold said [*mortgaged property*] and thereafter returned said execution satisfied.

VII. That the said W.... X.... directed said sheriff to make such levy and sale without regard to said mortgage, and agreed to indemnify him against any and all damage that might arise from said levy and sale; and that after said sale he received the proceeds, or a portion thereof, to his own use and benefit.

VIII. That since said sale the plaintiff has demanded of said sheriff the mortgaged goods, but he refused to deliver the same; and that thereupon the plaintiff demanded of the said sheriff the proceeds, or value thereof of said property, but he refused to pay over any part thereof.

IX. That by reason of the premises the plaintiff has been injured, to his damage ..... dollars.

WHEREFORE, etc.

### 1270. For malicious injury to property.

That on the .... day of ....., 19.., at ....., the defendant, wilfully and maliciously intending to injure the plaintiff, cut, broke, mutilated, and defaced [*or state other injury*] certain [*very briefly designating the things*] the property of the plaintiff, of the value of ..... dollars, and wholly destroyed the same [*or, and greatly injured them, so that the plaintiff was obliged to expend ..... dollars in repairing the same*], to his damage ..... dollars.

WHEREFORE, etc.



**1271. Against city or county, for damage done by mob or riot.<sup>2</sup>**

I. That at and before the times hereinafter mentioned the plaintiff was the owner and occupant of the store and basement, with appurtenances, known as No. .... in ..... street, in the city of ..... [or the town of ..... in the defendant county] and therein he conducted a business as a gunsmith, and dealer in guns, pistols, gun materials and fittings, and military equipments, fishing tackle, apparatus, and equipments, and then and there owned and had a large stock of such goods and merchandise in his possession.

II. That on the .... day of ....., 19.., and less than six months before the commencement of this action, a mob of disorderly and riotous persons collected together in said city [or town] and created a riot.

III. That on said day the rioters broke into the plaintiff's said store and premises, and carried away therefrom and destroyed a large portion of his said goods and merchandise and destroyed the windows of said store [or otherwise state injuries done to real and personal property, according to the facts]. [That a number of articles he was able to and did save from the rioters, by concealing them in the said basement. That he used all diligence to prevent the breaking open of his store and the destruction and injury of his aforesaid property, but was unable to prevent the same]. And that he was not apprised of any threat or attempt by said mob to destroy his property prior to the breaking in of his said store.

IV. That the said defendant city [or county] though having due notice of the said riot, immediately upon its breaking out, did not protect the plaintiff's property, but neglected so to do.

V. That the value of said goods and chattels so destroyed or injured by the said rioters was ..... dollars, after deducting the value of all goods returned to him by the police, as retaken from the rioters; and he also sustained

<sup>2</sup> An action of this nature is authorized by Wis. Stats. 1913 sec. 938. It must be brought within six months after the injury, and the plaintiff must have notified

the mayor or sheriff of the danger if he have opportunity after threats are made. Long v. Neenah, 128 Wis. 40; 107 N. W. 10.

..... dollars damage, by the breaking of his store, and injury to the building, and the breaking up of his business for .... days thereafter by reason of the destruction of his stock of goods.

WHEREFORE, etc.

**1272. For chasing plaintiff's cattle.**

That on the .... day of ....., 19.., at ....., the defendant chased and drove about [*designate the cattle*] of the plaintiff of the value of ..... dollars, whereby they were greatly damaged and injured, and .... of them were killed [*or bruised, according to the facts*] to the damage of the plaintiff ..... dollars.

**1273. For shooting plaintiff's dog.**

That on the .... day of ....., 19.., at ....., the defendant maliciously shot and killed a dog, the property of the plaintiff, of the value of ..... dollars, to the damage of the plaintiff ..... dollars.

**1274. For riding plaintiff's horse to its permanent injury.**

That on the .... day of ....., 19.., the defendant wrongfully took a horse belonging to defendant and rode the same for a long distance at excessive speed, whereby the same became broken-winded and greatly reduced in value, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

## CHAPTER XLVIII.

### COMPLAINTS IN REPLEVIN.

- |   |  |
|---|--|
| 1275. By owner against wrong-doer for goods wrongfully taken.                                   | 1281. By seller against a fraudulent buyer of goods.           |
| 1276. The same, where special damages are sought to be recovered.                               | 1282. The same, joining transferee as defendant.               |
| 1277. The same, for goods taken from plaintiff's lessee or bailee.                              | 1283. By one having special property in goods.                 |
| 1278. The same, for goods taken from plaintiff's assignor.                                      | 1284. Against sheriff for exempt property seized on execution. |
| 1279. By owner for wrongful detention when original possession was not wrongful (general form). | 1285. The same; general form.                                  |
| 1280. The same, another form.   | 1286. Against a fraudulent purchaser.                          |
|   | 1287. Against transferee of fraudulent purchaser.              |

As actions to recover the possession of specific personal property are commonly called actions in replevin, the term is retained in the heading of this chapter as being convenient, although not strictly accurate in most of the code states. [See headnote to Chapter XII for references to the statutes of the various states on the subject.]

#### 1275. By owner against wrong-doer for goods wrongfully taken.

I. That at the time hereinafter mentioned, the plaintiff was the owner and lawfully possessed of [or entitled to the immediate possession of] [*briefly designate the goods*], of the value of . . . . . dollars, and still is the owner thereof.

II. That on the . . . . day of . . . . ., 19.., at . . . . . the defendant wrongfully took said goods and chattels from the possession of this plaintiff, and still unjustly detains the same, to the damage of the plaintiff . . . . . dollars.

WHEREFORE this plaintiff demands judgment against the defendant for the recovery of the possession of said goods and chattels, or for the sum of . . . . . dollars, the value thereof, in case a delivery cannot be had; together with . . . . . dollars his damages, and for his costs.

**1276. The same, where special damages are sought to be recovered.**

[Under last preceding form general damages only can be recovered; if it is desired to recover special damages in addition, the facts showing same should be alleged as for instance]:

III. That the reasonable value of the use of said property during the time the same has been so unjustly detained by the defendant is the sum of . . . . . dollars [or state other facts showing special damages, such as injury to the property.]

WHEREFORE, etc. [as in last preceding form].

**1277. The same, for goods taken from plaintiff's lessee or bailee.**

I. That at the time hereinafter mentioned the plaintiff was, and still is, the owner of [briefly designate the goods] of the value of . . . . . dollars, which goods were then in the possession of one M. . . . N. . . . to whom the plaintiff had leased the same for a certain term [or, with whom the plaintiff had deposited the same for storage, or otherwise, according to the fact].

II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant wrongfully took said [goods and] chattels from the possession of said M. . . . N. . . . and still unjustly detains the same, to plaintiff's damage . . . . . dollars.

[III. That before this action said term expired, and thereupon the plaintiff became entitled to the immediate and exclusive possession of said goods].

WHEREFORE, etc. [as in Form 1275].

**1278. The same, for goods taken from plaintiff's assignor.**

I. That at the time first hereinafter mentioned one M. . . . N. . . . was the owner and lawfully possessed of [briefly designate the goods] of the value of . . . . . dollars.

II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant wrongfully took said goods from the possession of said M. . . . N. . . . and ever since has unjustly detained the same, to the damage of said M. . . . N. . . . in the sum of . . . . . dollars.

III. That on the .... day of ....., 19.., said M.... N.... duly sold and assigned to the plaintiff said goods and his claim to damages for said taking and detention.

WHEREFORE, etc. [*as in Form 1275*].

**1279. By owner for wrongful detention when original possession was not wrongful (general form).**

I. That at the time hereinafter stated the plaintiff was and still is the owner and entitled to the immediate possession of the following described personal property [*describe same*] of the value of ..... dollars.

II. That defendant is in possession of said property and wrongfully detains the same from plaintiff, in the county and state aforesaid, and has so detained it ever since the .... day of ....., 19.., to the damage of plaintiff ..... dollars.

[III. That on the .... day of ....., 19.., the plaintiff demanded of the defendant that he deliver said property to the plaintiff, but defendant refused so to do].<sup>1</sup>

WHEREFORE, etc., [*as in Form 1275*].

**1280. The same, another form.**

I. [*As in Form 1275*].

II. That on the .... day of ....., 19.., at ....., one M.... N.... [*or, certain persons to the plaintiff unknown*] wrongfully took said goods and chattels from the possession of the plaintiff [*or otherwise*] and unjustly detained the same.

III. That thereafter the same came to the possession of the defendant, who refuses to deliver them to the plaintiff, although, before this action, to-wit, on the .... day of ....., 19.., by the plaintiff duly requested so to do; but on the contrary, still unjustly detains them from the plaintiff, to his damage ..... dollars.

WHEREFORE, etc.

<sup>1</sup> Where only wrongful detention is alleged it is usual to plead demand and refusal, although it is held to be unnecessary because demand and refusal are simply facts showing wrongful detention, which is the ultimate essential fact. *Oleson v. Merrill*, 20 Wis. 462;

*Guthrie v. Oleson*, 44 Minn. 404; 46 N. W. 853. Where, however, demand and refusal are the facts relied upon to prove wrongful detention it is well to plead them in order to force an admission from the defendant and thus simplify the issues.



**1281. By seller against a fraudulent buyer of goods.**

I. That on the .... day of ....., 19.., at ....., the defendant with intent to deceive and defraud the plaintiff by inducing the plaintiff to sell and deliver the goods hereinafter named to him falsely and fraudulently represented to the plaintiff that he, the defendant, was solvent, and was worth the sum of ..... dollars over and above all his liabilities [*or otherwise, according to the fact.*]

II. That the plaintiff relying on said representations and believing the same to be true, was thereby induced to sell and deliver, and did sell and deliver to the defendant [*briefly designate the goods*] upon credit, and that the said goods were and are of the value of ..... dollars.

III. That the said representations were false and untrue in fact in that [*here state particularly in what respect*] and were then known by the defendant to be false.

IV. That no part of the purchase price of said goods has been paid, and that on the .... day of ....., 19.., the plaintiff notified defendant that he disaffirmed said sale and demanded that defendant return to plaintiff the possession of said goods, but that defendant refused so to do [*or if part of purchase price has been paid allege offer to return the same or tender*].

V. That the defendant, having so obtained from the plaintiff the possession of said goods, wrongfully detains them from the plaintiff, to his damage ..... dollars.

[*Add allegations showing special damage, if any.*]

WHEREFORE, etc. [*as in Form 1275*].

**1282. The same, joining transferee as defendant.**

[*Allegations I, II, III and IV as in last preceding form.*]

V. That the said [*buyer*] afterwards transferred said goods to the defendant Y.... Z.... who wrongfully detains them from the plaintiff.

VI. That on the .... day of ....., 19.., at ....., the plaintiff demanded of said Y.... Z.... that he deliver the same to him, but said Y.... Z.... refused so to do, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1283. By one having special property in goods.**

I. That the plaintiff at the times hereinafter mentioned had and still has a special property and ownership in the following described goods and chattels, to-wit, [*describe property*] resulting from the fact that on the . . . day of . . . . ., 19.., the plaintiff hired said goods [*or property*] from one M. . . . N. . . . the owner thereof, for the term of . . . months and paid said M. . . . N. . . . the sum of . . . . . dollars for the use thereof during said term; and that the said term has not yet expired, and the plaintiff is entitled to the immediate possession of said goods [*or property*].

[*Allege wrongful detention and damages, as in previous forms.*]

WHEREFORE, etc.

**1284. Against sheriff for exempt property seized on execution (sustained in Johnson v. Neal, 32 Nebr. 14; 48 N. W. 897).**

I. That the defendant was the duly appointed and qualified sheriff of . . . . . county, Nebraska, from the . . . day of . . . . ., 19.., to the . . . day of . . . . ., 19..

II. That the plaintiff is the owner and is entitled to the possession immediately of the following described goods and chattels, to-wit [*description*] being the same now in the possession of the said defendant, and which he still holds, of the value of . . . . . dollars.

III. That the defendant wrongfully detains the said goods and chattels from the possession of the plaintiff and has wrongfully detained the same, to his damage of . . . . . dollars.

IV. That said property was seized by the defendant as sheriff of said county, under an execution issued on a judgment against the plaintiff, but consisted of articles exempt from execution; that the plaintiff was, at the time of the levying of the said execution and still is, a resident of this state, and the head of a family; that he has neither lands, town lots nor houses subject to exemption as a homestead, and is engaged in the business of agriculture.

WHEREFORE, etc.

**1285. The same, (general form).**

I. That the plaintiff at the times hereinafter mentioned was and now is the owner and entitled to the immediate possession of [*describe the property*] and was and now is a resident of this state and householder [*or if by local statute any special qualification is prescribed in order to entitle the plaintiff to the exemption, state the facts showing that the plaintiff possesses the qualification.*]

II. That on or about the . . . . day of . . . . ., 19. . . , defendant was sheriff of . . . . . county; that on said day said defendant as such sheriff levied upon the plaintiff's personal property, including the above-described property, under an execution issued upon a judgment recovered by one E. . . . F. . . . against plaintiff; that said judgment was not recovered, in whole or in part, upon demands for work performed in plaintiff's family as a domestic, nor for the purchase money of any one or more of said articles of property. [*Or, if the local statute names other demands as against which the property is not exempt, allege that the judgment was not recovered upon such a demand.*]

III. That the said articles were and are exempt by law from levy under execution, and plaintiff at the time of said levy duly notified defendant that he claimed that said articles were so exempt and then and there demanded and has since demanded of defendant that he deliver the same to plaintiff.

IV. That defendant refused to deliver said articles or any part thereof to plaintiff, and wrongfully retains possession thereof, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

**1286. Against a fraudulent purchaser.**

I. That on the . . . . day of . . . . ., 19. . . the defendant, for the purpose of inducing the plaintiff to sell and deliver to him the goods hereinafter described upon credits, falsely and fraudulently represented to the plaintiff that he was solvent and worth . . . . . dollars over and above his liabilities [*or state the representations according to the fact.*]

II. That plaintiff believed and relied upon said representations and was thereby induced to sell and deliver to the defendant, upon credit, the following described goods [*describe same*].

III. That said representations were false, and were then known to defendant to be false; that defendant was not then solvent but was hopelessly insolvent [*negative each statement and allege the fact*].

IV. That thereafter, and on or about the . . . day of . . . . ., 19. . ., plaintiff notified defendant that he disaffirmed the said sale, and demanded of defendant that he surrender to the plaintiff the possession of said goods, but defendant refused so to do; [*if part payment has been made, or anything of value received by plaintiff, allege offer to return, as:*] and plaintiff then and there tendered to defendant the sum of . . . . . dollars, theretofore paid by defendant on account of the purchase price of said goods.

V. That at the time of the commencement of this action, plaintiff was the owner of said goods, and entitled to the immediate possession thereof by reason aforesaid.

VI. That by reason of the premises plaintiff has been damaged . . . . . dollars.

WHEREFORE, etc.

### 1287. Against transferee of fraudulent purchaser.

[*I, II and III as in last preceding form substituting however the name of the original purchaser for defendant.*]

IV. That thereafter, and on or about the . . . day of . . . . ., 19. . ., plaintiff notified said E. . . . F. . . . [*name original purchasers*] that he disaffirmed said sale, and demanded of said E. . . . F. . . . that he surrender to plaintiff the possession of said goods and then and there tendered to said E. . . . F. . . . the sum of . . . . . dollars theretofore paid by him to plaintiff on account of the purchase price thereof; but said E. . . . F. . . . refused to deliver said goods, or any part thereof, to plaintiff.

V. That thereafter, and on or about the . . . day of . . . . ., 19. . ., said E. . . . F. . . . delivered said goods to defendant; that thereafter, and on or about the . . . day of . . . . ., 19. . ., plaintiff demanded of defendant that he surrender possession thereof to plaintiff, but defendant refused so to do, and now wrongfully detains the same from plaintiff.

[*VI and VII as in paragraphs V and VI of last preceding form.*]

WHEREFORE, etc.

## CHAPTER XLIX.

### COMPLAINTS FOR BREACH OF CONTRACTS FOR SALE OF REAL ESTATE.

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|---|--|
| 1288. Purchaser against vendor.<br>1289. The same, coupled with claim for redelivery of securities for purchase money.<br>1290. Against purchaser, for not fulfilling agreement to purchase.<br>1291. Against purchaser at auction, for deficiency on resale. | 1292. Allegation of rescission by defendant, excusing plaintiff's non-performance.<br>1293. Allegation of false representations by defendant, excusing plaintiff from tendering payment. |
|---|--|

#### 1288. Purchaser against vendor.

I. That on the . . . . day of . . . . ., 19. . ., the defendants and the plaintiff entered into a contract in writing, subscribed by the defendants, whereby it was mutually agreed that the said defendants should sell to the plaintiff certain premises known as . . . . . in . . . . . for the sum of . . . . . dollars, to be paid therefor by this plaintiff; that the defendants should make a good title to the said premises, clear of all incumbrances, and deliver a deed thereof on the . . . . day of . . . . ., 19. . .; and that the plaintiff should thereupon pay to the said defendants the said sum [*or attach copy of agreement*].

II. That the plaintiff duly performed all the conditions of said contract on his part and tendered the said purchase money to the defendant on the . . . . day of . . . . ., 19. . .

III. That the defendants did not on said . . . . day of . . . . ., nor have they at any other time whatsoever given him a deed of the premises pursuant to the agreement, but refused, and wholly failed to do so, to his damage . . . . . dollars.

*Or:* III. That there is a mortgage upon the said property, made by O. . . . P. . . . to Q. . . . R. . . . for . . . . . dollars, which was recorded in the office of . . . . . on the . . . . day of . . . . ., 19. . . [*or, of which the plaintiff then had notice*], and which then was and still is an incumbrance on said title [*or*



*state any other defect of title*]; and that the defendant could not, and did not make good title pursuant to his agreement, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1289. The same, coupled with claim for redelivery of securities for purchase money (Holmes v. Holmes, 9 N. Y. 525).**

*First.* For a first cause of action, alleges:

I. That on the . . . . day of . . . . ., 19.., this plaintiff and the defendant entered into an agreement in writing, under their hands and seals, whereby the defendant agreed to sell to the plaintiff the farm the defendant then resided on, in the town of . . . . . in the county of . . . . . and containing . . . . acres, or thereabouts, for the sum of . . . . . dollars per acre; and that he would, on the 1st day of May then next ensuing, at the county clerk's office, in the town of Poughkeepsie, between the hours of eight o'clock in the morning and six in the evening, on receiving from the plaintiff the sum of . . . . . dollars per acre, at his own expense execute a proper conveyance for conveying the fee simple of said premises to this plaintiff free of all incumbrances; and that plaintiff agreed that he would, at the time and place above mentioned, on the execution of such conveyance, pay to the defendant the sum of . . . . . dollars per acre as aforesaid; and that in said agreement the defendant acknowledged the payment by the plaintiff of \$1000 in part payment of said premises; and further agreed to take a bond conditioned for the payment of six thousand dollars, secured by a mortgage on said premises in payment of \$6000 of the purchase-money, said bond and mortgage to be payable in one year from said 1st day of May, and to bear interest at six per cent per annum; and further agreed to pay this plaintiff, on failure of performance, one thousand dollars liquidated damages.

II. That on the [*day agreed*] at [*the place agreed*] the plaintiff was ready and willing to fulfill the agreement on his part in all respects [*or where a tender was necessary*: That on the . . . . day of . . . . ., 19.., at . . . . ., the plaintiff was ready and willing to fulfill the agreement on his part in all respects, and then and there offered to the defendant to accept a conveyance of the premises, and tendered to the defend-

ant a bond and mortgage drawn and executed pursuant to the agreement, and the residue of the purchase-money in cash] and otherwise has duly performed all the conditions of said agreement on his part.

III. That the defendant refused to convey the said premises, pursuant to the agreement, and he then could not and cannot now convey a good title to the farm free of all incumbrances, but on the contrary, the same was and still is subject to various defects and incumbrances, and in particular to a lease made by him to the trustees of the school district for the erection and use of a school-house, and to the inchoate right of dower of the wife of one G. . . . H. . . . who is still living; wherefore the defendant failed to perform his agreement, to the damage of the plaintiff one thousand dollars.

*Second.* And for a second cause of action the plaintiff here, by express reference, repeats the allegations of paragraphs I, II and III of this complaint and further alleges:

IV. That the payment of \$1000 hereinbefore stated to have been made by the plaintiff to the defendant, in pursuance of the said agreement, was made by a negotiable promissory note for that amount, made by this plaintiff, payable to the order of one W. . . . H. . . ., and indorsed by him, which note was delivered to the defendant, and accepted by him in payment of said sum of one thousand dollars; and still remains in his possession.

WHEREFORE the plaintiff demands judgment against the defendant: 1st, for the sum of one thousand dollars; and 2nd, that he be required to cancel and deliver up to the plaintiff said note.

### 1290. **Against purchaser, for not fulfilling agreement to purchase.**

I. That on the . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff and the defendant entered into an agreement in writing, under their hands and seals, of which the following is a copy: [*copy of the contract.*]

*Or:* I. That on the . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [*briefly designate the*

*premises*] in the town of . . . . . county of . . . . . and state of . . . . . for . . . . . dollars, payable [*specifying terms*].

II. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the plaintiff tendered [*or, was ready and willing, and offered to execute*] to the defendant a sufficient deed of the said premises on payment of the sum [*or otherwise, according to the contract*] and still is ready and willing to execute the same; and otherwise has duly performed all the conditions thereof on his part.

III. That the defendant neglected to comply with the terms of the agreement on his part, and wholly failed to pay the purchase-money, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1291. Against purchaser at auction, for deficiency on resale.**

I. That this plaintiff, being the owner in fee of twenty-six lots of land, in the . . . . ward of the city of . . . . . put them up for sale by auction, at the . . . . . in the city of . . . . . on the . . . . day of . . . . ., 19. . . , and announced before the commencement of the sale, as a part of the terms of sale, that ten per cent of the purchase-money was on the day of sale to be paid by the purchaser to the plaintiff, and to the auctioneer the auctioneer's fee of ten dollars on each lot; and that if any purchaser failed to make such payments, the lot would be resold, and he be charged with the deficiency.

II. That at the said sale, C. . . . D. . . . , the defendant, bid in and became the purchaser of eight lots [*describing same*], for the price of . . . . . dollars for each lot.

III. That the said defendant did not, on the day of sale, or at any other time, pay ten per cent, or any part of the price bid, or the purchase-money, or auctioneer's fees, or any part thereof.

IV. That in consequence of such neglect of payment, and after previous notice given to the defendant of the time and place of resale, and that he would be charged with the deficiency, the said lots were put up to resale, and resold at the price of . . . . . dollars for each lot, making a deficiency of . . . . . dollars upon the eight lots.

WHEREFORE, etc.

**1292. Allegation of rescission by defendant, excusing plaintiff's non-performance (North v. Pepper, 21 Wend. 636).**

That on the . . . . day of . . . . ., 19 . . ., and before the time for the plaintiff to perform the conditions thereof on his part, the defendant gave notice in writing to the plaintiff that he had determined not to take the land, and the defendant abandoned the agreement, and ever since wholly failed to perform it, to the plaintiff's damage . . . . . dollars.

**1293. Allegation of false representations by defendant, excusing plaintiff from tendering payment (Clark v. Crandall, 7 Barb. 169).**

That on or about the . . . . day of . . . . ., 19 . . ., and before the time for performance on the part of the plaintiff had arrived, the defendant, for the purpose of preventing the plaintiff from being ready to receive the said . . . . . and pay therefor, falsely and fraudulently represented to the plaintiff that he had sold said . . . . . to other persons; and that relying on said representations, and solely by reason thereof, the plaintiff did not provide the means, and was not prepared to receive and pay for the same, as he otherwise would have done.

## CHAPTER L.

### COMPLAINTS AGAINST AGENTS AND BAILEES FOR BREACH OF DUTY.

- |   |   |
|---|---|
| 1294. Against an agent for not using diligence to sell goods.                         | 1305. Against a watchmaker, for not using due care and skill in repairing.                        |
| 1295. The same, for carelessly selling to insolvent.                                  | 1306. The same, for not returning the watch.  |
| 1296. The same, for selling for worthless paper.                                      | 1307. For negligence in loading a cargo.  |
| 1297. The same, for breach of instructions as to sale.                                | 1308. For immoderately driving a horse.   |
| 1298. Against an auctioneer, for selling below the seller's limit.                    | 1309. For driving on a different journey from that agreed.  |
| 1299. Against the same, for selling on credit.  | 1310. Against the hirer of furniture, etc., for not taking care of the same.                      |
| 1300. Against an auctioneer or agent, for not accounting.                             | 1311. For failure to return goods deposited for repair.   |
| 1301. Against a bank, for neglecting to present a note lodged with it for collection. | 1312. For failure to return money deposited for safekeeping.                                      |
| 1302. The same, for not giving due notice.  | 1313. Against agent for failure to collect rents.   |
| 1303. By sheriff against a receptor.  | 1314. Against agent in charge of realty for an accounting.  |
| 1304. Against bailee, for not taking care of and returning goods.                     | 1315. Complaint against agent to recover secret commission paid to him in fraud of his principal. |

#### 1294. Against an agent for not using diligence to sell goods.

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant undertook and agreed to sell for the plaintiff, as his agent, and for a compensation to be thereafter paid \* certain goods of the plaintiff, to-wit [*very briefly designate them*], of the value of . . . . . dollars; and thereupon received the same from plaintiff for that purpose.

II. That defendant negligently failed to use reasonable diligence in selling \*\* said goods and kept them until . . . . ., 19. . .; that in the meanwhile they deteriorated in quality and



value, and the market price thereof fell; that on said last named day defendant sold said goods for . . . . . dollars, which was . . . . . dollars less than they could have been sold for by the exercise of reasonable diligence on the part of defendant immediately after so receiving them.

III. That by reason of the premises the plaintiff has been damaged in the sum of . . . . . dollars.

WHEREFORE, etc.

**1295. The same, for carelessly selling to insolvent.**

[*Proceed as in preceding Form to the \*\*, continuing*]: but negligently sold the said . . . . . for the plaintiff to one M. . . . . N. . . . . who was then insolvent to the knowledge of defendant, [*or insolvent as the defendant in the exercise of reasonable care and diligence ought to have known*] without receiving any part of the price therefor, or taking security for the payment thereof; whereby the plaintiff has wholly lost said goods and the purchase price thereof, to his damage . . . . . dollars.

WHEREFORE, etc.

**1296. The same, for selling for worthless paper.**

I. [*As in first form in this chapter, inserting at the \*:* for cash, or an approved bill or note at sixty days or less, and not otherwise [*or according to the fact*].

II. That the defendant did not use due diligence in selling the same, but negligently and knowingly sold the same for a bill of exchange made by one M. . . . . N. . . . . an insolvent person, which bill is worthless and of no value to the plaintiff, and although the same became payable before this action, is unpaid, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1297. The same, for breach of instructions as to sale.**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the plaintiff employed the defendant, for a compensation, to sell . . . . hogsheads of sugar of the value of . . . . . dollars, for the plaintiff; and that he received the same from the plaintiff for that purpose.

II. That in consideration of the premises, the defendant then promised the plaintiff to use due diligence to sell, and in selling the same for the plaintiff, and in obeying the reasonable directions of the plaintiff in regard to the sale thereof.

III. That the plaintiff afterwards, on or about the . . . day of . . . . ., 19.., directed the defendant to sell said sugar at the price of . . . . and not less, in case the same could be obtained by using reasonable diligence in that behalf.

IV. That said direction was a reasonable one, and the defendant, by using reasonable diligence, might and ought to have obtained that price for the sugar.

V. That the defendant did not use due and reasonable diligence in obeying said direction, and neglected to sell the said sugar according thereto, and by reason thereof, and said sugar being afterwards sold by the defendant for the plaintiff, produced . . . . . dollars less than it would have produced had the defendant used such due diligence to sell, and in selling the same; and thereby, also, the said sugar became much wasted and deteriorated in value, and the plaintiff incurred . . . . . dollars expenses in warehousing the same, to his damage . . . . . dollars.

WHEREFORE, etc.

**1298. Against an auctioneer, for selling below the seller's limit.**

I. That the defendant being engaged at . . . . . in the business of an auctioneer, in consideration that the plaintiff would deliver to him [*very briefly designate the goods*] to be sold by him for the plaintiff for a compensation, undertook, on or about the . . . . day of . . . . ., 19.., to sell the same\* at and for no less money than the sum of . . . . . dollars, and not to sell them otherwise.

II. That the plaintiff accordingly delivered said goods to the defendant for that purpose.

III. That the defendant, without the consent of the plaintiff, sold them for less than the aforesaid sum, to-wit, for . . . . . dollars, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1299. Against the same, for selling on credit.**

[*I and II as in preceding Form, substituting at the \*:* for cash, and not otherwise.

III. That the defendant afterwards sold said goods on credit without the plaintiff's consent, whereby the plaintiff has hitherto lost their value, to-wit, the sum of ..... dollars, to his damage ..... dollars.

WHEREFORE, etc.

**1300. Against an auctioneer or agent, for not accounting.**

I. [*Allege agency, as in preceding form, or thus:* That heretofore, [and on or about the .... day of ....., 19..] the plaintiff shipped from ..... consigned to the defendant, then his agent, at ..... to sell for cash [*very briefly designate the goods*] of the value of ..... dollars, of which consignment said defendant had notice, and which agency, for a valuable consideration, he undertook and entered upon.

II. That the defendant received said goods [and thereafter sold the same, or some part thereof] on account of the plaintiff.

III. That although sufficient time has elapsed therefor, he has neglected and refused, and still neglects and refuses, to render to the plaintiff a just and true account of such sale, and of the proceeds thereof, and has also neglected and refused to pay over the proceeds to the plaintiff, to his damage ..... dollars.

WHEREFORE, etc.

**1301. Against a bank, for neglecting to present a note lodged wth it for collection (Bank v. Smedes, 3 Cow. 662).**

I. [*For allegation of defendant's incorporation see Forms 848 and 849, ante.*]

II. That the defendants, on or about the .... day of ....., 19.., received from the plaintiff, he then being a depositor at their bank, a negotiable promissory note [*or, bill of exchange*] of which the following is a copy [*copy of note*].

III. That the defendants, in consideration thereof, undertook and promised the plaintiff to use due diligencé in presenting said note, and demanding payment thereof, from

the makers [*or, if it is a bill of exchange: from the acceptors*]; and in case of default in payment thereof, according to its tenor [to cause the same to be duly protested for non-payment, and] to cause due notice thereof to be given to M. . . . N. . . . the indorser [*or, drawer*] thereof, whereby to render him liable thereon.

IV. That the defendants \* did not present said [note] for payment on the day of its maturity, but negligently omitted to do so, by reason whereof the said endorser [*or drawer*] has been discharged from liability thereon and the plaintiffs have wholly lost the moneys due on said note.

WHEREFORE, etc.

### 1302. The same, for not giving due notice.

[*As in preceding Form to the \* and continue*]: presented said [note] on the day of its maturity, and the same was not paid, but that they did not give due notice thereof to the said indorser [*or drawer*] but negligently omitted to do so, by reason whereof the said indorser [*or drawer*] has been discharged from liability thereon and the plaintiffs have wholly lost the moneys due on said note.

WHEREFORE, etc.

### 1303. By sheriff against a receiptor.

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant received from the plaintiff [then the sheriff of the county of . . . . .] certain goods of the value of . . . . . dollars, described as follows [*briefly describe the same*] [the property of one M. . . . N. . . ., a judgment-debtor, upon which this plaintiff had levied an execution delivered to him, as such sheriff]; and the defendant thereupon gave to the plaintiff a receipt, of which the following is a copy [*copy receipt*]. [*Or state contents of the receipt*].

II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff demanded of the defendant that he deliver said goods or pay said sum of . . . . . dollars; but he refused and still refuses to do so.

III. That by reason of the premises the plaintiff has suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1304. Against bailee, for not taking care of and returning goods.**

I. That on the .... day of ....., 19.., at ....., the plaintiff delivered to the defendant a quantity of merchandise [*or very briefly designate the articles*] of the value of ..... dollars, to be by the defendant safely and securely kept for the plaintiff [for a compensation] and to be returned and re-delivered to the plaintiff on request.

II. That the plaintiff duly performed all the conditions of said agreement on his part; and on or about the .... day of ....., 19.., requested the defendant to redeliver the same.

III. That the defendant, not regarding his promise and undertaking, did not take care of and safely keep the said goods for the plaintiff, nor did he, when so requested, or at any time afterwards, redeliver the same to the plaintiff; but on the contrary, the defendant so negligently and carelessly conducted himself with respect to the said goods, and took so little care thereof, that by and through the mere carelessness, negligence and improper conduct of the defendant and his servants, the goods were wholly lost to the plaintiff, to his damage ..... dollars.

WHEREFORE, etc.

**1305. Against a watchmaker, for not using due care and skill in repairing.**

I. That the defendant, being a watchmaker at ....., the plaintiff, on the .... day of ....., 19.., delivered to him a watch of the plaintiff, of the value of ..... dollars, to be repaired by the defendant, for reward.

II. That in consideration of the premises, the defendant then undertook said employment, and to use due care and skill in repairing said watch, and to take care thereof while in his possession, and to redeliver the same to the plaintiff on request.

III. That the defendant did not take due and proper care of the said watch whilst in his possession, whereby the said watch was broken and injured; and he did not use due care or skill in repairing the said watch, but did his work in so careless and unworkmanlike manner that no benefit was



derived therefrom, and the watch was broken and injured, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

### 1306. The same, for not returning the watch.

I and II. [*As in preceding Form.*]

III. That after a reasonable time for the repair of said watch, and on or about the . . . day of . . . . ., 19.., the plaintiff requested the defendant to redeliver the same; but he refused and still refuses so to do, to the plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

### 1307. For negligence in loading a cargo.

I. That on the . . . day of . . . . ., 19.., at . . . . ., the plaintiff, at the request of the defendant, caused to be delivered to him [*very briefly designate the goods*] of the plaintiff of the value of . . . . . dollars, to be by the defendant safely and securely loaded on board a certain vessel, at . . . . . for the plaintiff, for a reasonable compensation to the said defendant in that behalf; and the defendant then received the goods for that purpose.

II. That the defendant, not regarding his duty in that behalf, afterwards, by himself and his servants, conducted so carelessly and improperly in the loading of the said goods on board the said vessel, that by their mere negligence and improper conduct, the goods were broken and injured, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

### 1308. For immoderately driving a horse.

I. That on the . . . day of . . . . ., 19.., at . . . . ., the defendant hired and received from the plaintiff a horse of the plaintiff, of the value of . . . . . dollars, to drive.

II. That the defendant drove the horse so immoderately, and so neglected the care of him, that the said horse afterwards, on the . . . day of . . . . ., 19.., died [*or, that he became lame and hurt, and remained so ever since*], to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1309. For driving on a different journey from that agreed.**

I. That on the .... day of ....., 19.., at ....., the defendant hired and received from the plaintiff a horse [and carriage] of the plaintiff of the value of ..... dollars, to drive from ..... to ..... and not elsewhere.

II. That the defendant, in violation of the agreement, performed a different journey than that aforesaid, and drove said horse [and carriage] from ..... to .....

III. That he did not take proper care of said horse [and carriage] but so negligently drove and managed the same that [the carriage was broken] to the plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1310. Against the hirer of furniture, etc., for not taking care of the same.**

I. That on the .... day of ....., 19.., at ....., the defendant hired and received of the plaintiff certain goods [*very briefly designating them*] of the value of ..... dollars, for use during the period of one year then next ensuing, at the sum of ..... dollars.

II. That the defendant, not regarding his duty in that behalf, did not take due and proper care of the said goods, or use the same in a reasonable or proper manner during the said time, but took so little care of the said goods that they became injured and deteriorated in value, to the plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1311. For failure to return goods deposited for repair.**

I. That at the times herein mentioned defendants were partners engaged in the business of [*state business*] in the city of ..... under the firm name of E.... F.... & Co.

II. That on ....., 19.., plaintiff delivered to defendants certain [*describe property*], the property of plaintiff, of the value of ..... dollars and defendants agreed to repair, the same for a reasonable compensation, and to return the same to plaintiff when finished.

III. That plaintiff has duly performed all the conditions of said agreement on his part to be performed.

IV. That on . . . . ., 19.., and after a reasonable time for making such repairs, plaintiff demanded a return of said goods by defendants, but they refused and still refuse to return them to plaintiff, to his damage . . . . . dollars.

WHEREFORE, etc.

**1312. For failure to return money deposited for safe-keeping.**

I. That on . . . . ., 19.., plaintiff delivered . . . . . dollars to defendant and defendant promised plaintiff to keep the same safely and to redeliver the same to plaintiff upon request.

II. That on . . . . ., 19.., plaintiff requested defendant to redeliver the same, but defendant refused to do so and still refuses, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

**1313. Against agent for failure to collect rents.**

I. That at the times hereinafter mentioned plaintiff was the owner of [*describe premises*].

II. That on . . . . ., 19.., plaintiff employed defendant as his agent to take charge of said premises, to rent them and to collect the rent therefrom and to account for the same to plaintiff.

III. That thereupon defendant took control of said premises as agent as aforesaid and continued in such control until the . . . . day of . . . . ., 19..

IV. That the defendant negligently failed to rent said premises or collect rent therefrom, from the . . . . day of . . . . ., 19.. to the . . . . day of . . . . ., 19.., though he could have rented them and collected rent therefrom, if he had exercised reasonable diligence and skill.

V. That the rental value of said premises during said period was . . . . . dollars, and plaintiff has received nothing therefor.

WHEREFORE, etc.

**1314. Against agent in charge of realty for an accounting.**

I. That from . . . . ., 19.. to . . . . ., 19.., plaintiff was the owner of [*describe premises*].

II. That during all such time defendant as agent of the plaintiff, had the control and management of said premises and as such collected the rentals therefrom and expended large sums of money for the repair of the buildings thereon, but the exact amounts so collected and expended the plaintiff is unable to state.

III. That defendant has failed to account to plaintiff for any of such moneys, or to pay to plaintiff any of the same, though frequently requested by plaintiff to do so, and particularly on . . . . ., 19..

IV. That defendant has failed to pay the taxes assessed and due on said premises for said period.

WHEREFORE plaintiff demands judgment for an accounting to determine the amount due plaintiff from defendant on account of such matters, and that plaintiff have judgment for the amount so determined, and for such other relief as may be just, with costs.

**1315. Complaint against agent to recover secret commission paid to him in fraud of his principal.**

I. [*Allege the business of the plaintiff and the fact that the defendant was plaintiff's employee or agent and set forth the facts showing that it was the duty of defendant, either by special arrangement or by the general duties of his employment, to purchase property for the plaintiff as his principal.*]

II. [*Allege the purchase of the property in question by the defendant as agent, the acceptance of the same by the plaintiff and the payment of the purchase price.*]

III. [*Allege that defendant without plaintiff's knowledge or consent corruptly received from the vendor a bonus or percentage on the sale, naming the sum, and that said sum was paid by the vendor as a present or bribe in consideration of the services of the defendant in inducing the plaintiff to purchase, receive and pay for the property.*]

WHEREFORE, etc. [*demand judgment for the amount corruptly received by the agent.*]

## CHAPTER LI.

### COMPLAINTS AGAINST COMMON CARRIERS, INN-KEEPERS, ETC. FOR BREACH OF CONTRACT OR NEGLIGENCE OF DUTY.

- |   |   |
|---|---|
| 1316. Against a common carrier on contract for loss of goods.                                 | 1330. Against warehouseman for loss of goods.   |
| 1317. Against common carrier for breach of duty as carrier.                                   | 1331. The same, for injury to goods by neglect to obey instructions.                      |
| 1318. Against either common or private carrier for breach of special contract of carriage.    | 1332. The same, for refusal to deliver.   |
| 1319. Against a common carrier for loss of baggage.   | 1333. The same, for not forwarding goods according to agreement.                          |
| 1320. Against the same, for failure to deliver at agreed time, with claim for special damage. | 1334. Against a telegraph company for failure to deliver a message according to contract. |
| 1321. Allegation of through contract over connecting lines.                                   | 1335. To recover for mental anguish.  |
| 1322. Against carriers by water for not regarding notice to keep dry.                         | 1336. Against express company for failure to deliver money.                               |
| 1323. Allegation of negligent loading.  | 1337. By assignee of warehouse receipt for refusal to deliver grain.                      |
| 1324. Against carrier for refusing to transport cattle in compliance with previous agreement. | 1338. Complaint against railroad company for death and injury to stock shipped.           |
| 1325. Against innkeeper for loss of trunk or contents.  | 1339. Complaint against railroad company for negligent delay in furnishing cars.          |
| 1326. Against proprietor of bathing house for loss of pocket-book.                            | 1340. Against a common carrier for refusing to receive and carry goods.                   |
| 1327. Against innkeeper, for refusal to receive traveler.                                     | 1341. Against a railway company for not safely keeping goods left in the parcel-room.     |
| 1328. Against pledgee for loss of pledge.   |   |
| 1329. The same, for injury to pledge.   |   |



**1316. Against a common carrier on contract for loss of goods.<sup>1</sup>**

I. That at the times hereinafter mentioned, the defendant was and still is a corporation duly organized and existing under the laws of the state of . . . . ., and was a common carrier of goods for hire between the places hereinafter mentioned.

II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., in consideration of the sum of . . . . . dollars then paid [*or, agreed to be paid*] to him by the plaintiff [*or, of a reasonable compensation then agreed to be paid to him by the plaintiff*], the defendant agreed to safely carry to . . . . . and there deliver to O. . . . P. . . . or order [*or otherwise, as the case was*] certain goods, the property of the plaintiff, of the value of . . . . . dollars, consisting of [*here briefly describe the goods*] which the plaintiff then and there delivered to the defendant, who received the same upon the agreement and for the purposes before mentioned.

III. That the defendant did not safely carry and deliver the said goods pursuant to said agreement [although on the . . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff, *or*, said consignee, demanded the same of him]; but, on the contrary, the defendant negligently allowed the same to be wholly lost [*or destroyed*], to the plaintiff's damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1317. Against common carrier for breach of duty as carrier.**

I. [*As in preceding form.*]

<sup>1</sup> Actions against common carriers for failure to transport goods or persons safely may generally be brought either in contract or in tort, and it is sometimes difficult to determine the nature of the action from the pleadings. While in most cases the distinction is immaterial, there may be considerations, such as the application of the statute of limitations, which will make the question one of importance. In general it may be

said that if it is desired to sue in contract the complaint should set forth the contract, the consideration paid or agreed to be paid, and the breach of the contract; but if it be desired to sue in tort it will be sufficient to set forth the defendant's character as a common carrier, the receipt of the plaintiff's goods in that capacity and the failure to carry out its public duty as carrier substantially as in the next following form.

II. That on the . . . day of . . . . ., 19 . . ., one M . . . . N . . . . delivered to the defendant, and the defendant as such carrier received certain goods, the property of the plaintiff, to-wit [*describe the goods*], of the value of . . . . . dollars, to be by the defendant safely carried to . . . . . and there delivered to plaintiff, for a reasonable reward to be paid by . . . . . therefor.

III. That the defendant did not safely carry and deliver said goods; but on the contrary, negligently allowed the same to be wholly lost [*or destroyed*] to the plaintiff's damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1318. Against either common or private carrier for breach of special contract of carriage.**

I. [*If action be against a corporation which is a common carrier allege its incorporation and its character as a common carrier, as in the first form in this chapter.*]

II. That on the . . . day of . . . . ., 19 . . ., at . . . . ., the plaintiff delivered to the defendant certain goods, the property of the plaintiff, to-wit, [*describe the goods*] of the value of . . . . . dollars, and in consideration of the sum of . . . . . dollars [*or, of a reasonable compensation*] paid [*or, agreed to be paid*] to him [*it*] by the plaintiff, the defendant then and there entered into an agreement with the plaintiff in writing, subscribed by the defendant [*by his agent duly authorized thereto*] of which agreement the following is a copy [*copy of the agreement*].

III. That the defendant did not safely carry and deliver said goods pursuant to its agreement; but so negligently and carelessly conducted in regard to the same, that they were wholly lost to the plaintiff [*or, but that it failed to deliver them to O . . . . P . . . . although on the . . . day of . . . . ., 19 . . ., at . . . . . he was requested so to do*] to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1319. Against a common carrier for loss of baggage.**

I. [*As in Form 1316, inserting instead of the word "goods," the words "passengers with their baggage."*]

II. That on the . . . day of . . . . ., 19 . . ., at . . . . ., in

consideration of the sum of . . . . . dollars, then and there paid by the plaintiff, the defendant, in its capacity as common carrier, undertook and agreed to transport the plaintiff with his baggage from the said . . . . . to the city of . . . . . and then and there, for the purpose of such transportation received the plaintiff into its cars with his said baggage, consisting of [*describe same*] of the value of . . . . . dollars.

III. That the defendant failed and neglected to transport said trunks [*or other baggage*] safely and failed to deliver the same to the plaintiff at said city of . . . . . or at any other place, but negligently lost the same with their contents consisting of necessary wearing apparel and other personal effects to the damage of the plaintiff in the sum of . . . . . dollars.

WHEREFORE, etc.

**1320. Against the same, for failure to deliver at agreed time, with claim for special damage.**

I. [*As in Form 1316.*]

II. That on the . . . . day of . . . . ., 19.., at . . . . ., the plaintiff delivered to the defendants [one hundred sheep] of the value of . . . . . dollars, the property of the plaintiff, which the defendants, in consideration of . . . . . dollars, [*or, of a reasonable compensation to be*] paid them by the plaintiff, agreed safely to carry to the city of New York, and there deliver to the plaintiff, on or before the . . . . day of . . . . . etc. [*if contract was in writing insert or attach a copy*].

III. That the defendants did not fulfill their agreement safely to carry the same, and to deliver them in New York on said day; but, on the contrary, failed to deliver the same in New York until the . . . . day of . . . . ., 19..

IV. That the market value of said [sheep] in the city of New York on the [*day agreed*] was . . . . . dollars, but on the [*day of actual delivery*] was only . . . . . dollars; and that by reason of the premises the plaintiff was injured, to his damage . . . . . dollars.

WHEREFORE, etc.

**1321. Allegation of through contract over connecting lines (sustained in *Railway Co. v. McNulty*, 7 Tex. Civ. App. 32; 26 S. W. 414).**

That defendant was during said time a common carrier of

cattle, for hire, being engaged in the business of transporting cattle to and from different points in Texas where its railroad runs, and also by means of connecting lines to points in other states, and especially to the said place of Chicago; that on the said last named day plaintiff delivered to defendant, as a common carrier as aforesaid, at a certain station on its said road, to-wit, . . . . ., and defendant then and there received from plaintiff . . . . head of fine fat beef cattle of the value of . . . . .dollars per head, and defendant thereupon agreed that it would safely, securely and expeditiously, within a reasonable time thereafter, carry and convey from said station at . . . . . [to a certain other station, to-wit, Cairo, and from thence] to said place of Chicago, and from said last-named place to be safely delivered to G. . . . & Co., the agents of plaintiff, all for certain reasonable hire and reward to said defendant in that behalf paid by plaintiff.

**1322. Against carriers by water for not regarding notice to keep dry.**

I. That at the times hereinafter mentioned the defendants [*allege co-partnership or corporate character if such be the fact*] were common carriers of goods by water between . . . . . and . . . . . and owned and operated certain vessels or steamboats for the purpose.

II. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the plaintiff caused to be shipped on board one of said defendant's said vessels, to-wit, the [*give name*] certain [*very briefly designate the goods*] merchandise, the property of the plaintiff, of the value of . . . . .dollars [then in good order and well conditioned] in consideration whereof, and of the sum of . . . . . dollars, then and there paid [*or, agreed to be paid*] by the plaintiff [*or, by one M. . . . N. . . .*] to the defendant [*or, in consideration of a reasonable compensation by M. . . . N. . . . to be paid to the defendant therefor*] the defendant then and there promised to take care of and safely carry the said goods to . . . . . and there safely to deliver them to . . . . ., danger of the seas only excepted, and then and there received said goods for that purpose.

III. That the plaintiff then and there caused due notice to be given to the defendant, that it was necessary to the pres-

ervation of said goods that they should be kept in a dry condition.

IV. That the defendant failed to take care of, or safely to carry said goods; but, on the contrary, not regarding his said promise, so negligently and carelessly carried the same [and so negligently conducted, and so misbehaved in regard to the same in his said calling as a carrier] that they became wet, and thereby entirely ruined [*or state other injury, in its nature and extent according to the facts*]; which injury was occasioned, not by reason of any danger of the seas, but wholly through the negligence of the defendant and his servants.

V. That by reason of the premises the plaintiff was injured, to his damage . . . . . dollars.

WHEREFORE, etc.

### 1323. Allegation of negligent unloading.

I and II. [*As in last preceding form.*]

III. That said vessel afterwards safely arrived at . . . . . and no [*excepted perils*] prevented the safe carriage or delivery of the goods.

IV. That the defendant, not regarding his duty in that behalf, did not deliver the said goods to the plaintiff; and for want of due care in the defendant and his servants in unloading and delivering said goods, they were wholly lost to the plaintiff, to his damage . . . . . dollars.

WHEREFORE, etc.

### 1324. Against carrier for refusing to transport cattle in compliance with previous agreement (adapted from complaint sustained in Louisville, etc. *Railway Co. v. Godman*, 104 Ind. 490; 4 N. E. 163).

I. That at the times hereinafter mentioned the defendant was and still is a railroad corporation organized under the laws of the state of . . . . . and owned and operated a line of railroad between . . . . . and . . . . . and held out to the public and caused to be known that it was a common carrier of freight, stock and cattle from said . . . . . to said . . . . . and had suitable and proper appliances for loading and receiving stock and cattle at said station.

II. That on the . . . day of . . . . ., 19. . ., the plaintiff entered into an agreement with the defendant by the terms of



which said defendant agreed to receive upon its cars at said station of . . . . . on the 16th day of August, 19. ., seventeen head of fat cattle, the property of the plaintiff, of the value of . . . . . dollars, and to transport said cattle upon its cars to the said city of . . . . . and deliver the same to the plaintiff at the Union Stock Yards in said city of . . . . . at 8 o'clock a. m. on the 17th day of August, 19. ., all of which agreements were made by the defendant in consideration of the promise of the plaintiff then and there made to pay to the said defendant upon the delivery of said cattle in . . . . . the sum of . . . . . dollars for the carriage and delivery thereof.

III. That relying upon the said representations and promises of the defendant, the plaintiff on the . . . . day of . . . . ., 19. ., delivered the said cattle at the stock yards of defendant at said station of . . . . . in full time to ship the same upon said day, but that the defendant then and there refused to receive said cattle or to transport the same to said city of . . . . .

IV. That by reason of said refusal on the part of said defendant to receive said cattle upon its cars at the said station of . . . . . the plaintiff was compelled to drive said cattle to the station of . . . . . being another station upon the line of said defendant railway, at an expense of . . . . . dollars, and that said cattle could not be shipped at said last named station on the 16th day of August aforesaid, because of the time necessarily spent in driving the same to said station, but were received by defendant on the 17th day of August, 19. ., and were transported by defendant to said city of . . . . ., where they arrived and were delivered to plaintiff on the 18th day of August, 19. ., instead of on the morning of the 17th day of August, 19. .

V. That the object and purpose of the plaintiff in shipping said cattle to the said city of . . . . . was to make sale thereof upon the market, which object and purpose were well known to the defendant when it made the contract with the plaintiff hereinbefore set forth, and that the market price of cattle upon the market at said city of . . . . . was . . . . . dollars per hundred-weight upon the 17th day of August, 19. ., and was only . . . . . dollars per hundred-weight upon the 18th day of August, 19. ., whereby the plaintiff was obliged to and did sell said cattle for said decreased price, and was thus damaged by the said refusal of defendant to receive said

cattle at ..... and the consequent delay in the delivery thereof at ..... in the further sum of ..... dollars.

WHEREFORE, etc.

**1325. Against innkeeper for loss of trunk or contents.**

I. That at the times hereinafter mentioned, the defendant was the keeper of a common inn or hotel in the city of ....., known as "The ..... House."

II. That on the .... day of ....., 19.., this plaintiff [*or, one M.... N.... the infant son, or the servant of this plaintiff*] was received by the defendant into his said inn as a traveler, together with his baggage, to-wit, a trunk containing [*here designate contents lost*], the property of the plaintiff.

III. That the defendant and his servants so negligently and carelessly conducted themselves in regard to the same, that while he so remained at said inn, his said trunk was taken away [*or, was broken open, and said ... was taken away*] from the room of the said [*guest*] by some person or persons to the plaintiff unknown; and thereby became wholly lost to the plaintiff.

IV. That the value of the said trunk and goods [*or goods*] so as aforesaid lost by the plaintiff, was and is the sum of ..... dollars, and that by reason of the premises the plaintiff has suffered damage in the sum of ..... dollars.

WHEREFORE, etc.

**1326. Against proprietor of bathing-house for loss of pocketbook.**

I. That the defendant, at the time hereinafter stated, was a common innkeeper at the town of ..... in this state.

II. That on the ... day of ....., 19.., he received and entertained this plaintiff as a guest at his inn, for hire.

III. That the inn of the defendant was upon the seashore, and in connection with it the defendant maintained bathing-houses for the safe-keeping of the clothing, wardrobe, and such money and jewelry of his guests as are usually carried upon the person of guests and patrons of his inn and bathing-house.

IV. That while the plaintiff was then and there his guest, the defendant undertook, for compensation paid him by the plaintiff, to keep safely in one of his said bathing-houses, the

clothing and such articles of jewelry and valuables as the plaintiff then had upon his person, while the plaintiff should bathe; and that the plaintiff thereupon put into his said bathing-house his pocket-book containing money and such other property as is usually carried upon the person, of the value of . . . . .dollars, and left the same in the possession and charge of the defendant, both as innkeeper and as special bailee as aforesaid.

V. That while the plaintiff was bathing, his pocket-book and money were, by the negligence, carelessness, and dishonest management of the defendant and his servant, lost and stolen.

[VI. That the amount of the said money belonging to the plaintiff so lost and stolen, while the same was under the charge of the defendant was . . . . .dollars and upwards, in lawful money of the United States, and sundry small silver coins of trifling value; and that the plaintiff is by profession [*designating a business requiring the plaintiff to carry considerable money*] and that said sum was such an amount as he might reasonably and properly carry with him with reference to his circumstances in life, and the nature of this business.]

VII. That the said inn was upon the seashore, and that facilities for bathing according to the custom of the neighborhood, and as the defendant then well knew, were considered a part of the accommodations necessary to be afforded by the innkeepers in that vicinity.

VIII. That by said negligent, careless, and dishonest dealing of the defendant and his servants, the plaintiff has sustained damage in the sum of . . . . .dollars.

WHEREFORE, etc.

### 1327. Against innkeeper, for refusal to receive traveler.

I. [*As in Form 1326.*]

II. That on the . . . day of . . . . ., 19 . . ., the plaintiff applied to said defendant at his said inn for lodging and entertainment as a traveler, and then and there was ready and willing and offered to pay the said defendant his reasonable charges for such lodging and entertainment.

III. That the defendant, wholly disregarding his duty as innkeeper, refused to receive the plaintiff and refused to fur-

nish him lodging or entertainment at his said hotel, although he had ample accommodation therefor.

IV. That by reason of such refusal the plaintiff was obliged to and did procure a conveyance at an expense of . . . . .dollars, to carry and which did carry the plaintiff to another hotel at a distance of . . . miles to procure lodging and entertainment [*or allege other facts showing damage*] to plaintiff's damage . . . . .dollars.

WHEREFORE, etc.

### 1328. Against pledgee for loss of pledge.

I. That on the . . . day of . . . . ., 19 . . ., at . . . . ., the plaintiff delivered to the defendant [*briefly designate the thing*] the property of this plaintiff, of the value of . . . . .dollars, by way of pledge to the defendant to secure the sum of . . . . .dollars theretofore loaned by the defendant to the plaintiff [and interest thereon; *or other indebtedness*] which [*pledge*] the defendant received for that purpose, and agreed with the plaintiff to take good care of until it should be redeemed by the plaintiff.

II. That the defendant has failed to fulfill said agreement on his part, and on the contrary took so little care of, and so negligently kept said [*pledge*] that while it was in his possession for the purpose aforesaid, it was through his negligence lost, to the damage of the plaintiff . . . . .dollars.

III. [*If the loan has been paid allege the fact.*]

WHEREFORE, etc.

### 1329. The same, for injury to pledge.

I. [*As in the preceding Form.*]

II. That the defendant, not regarding his promise, so negligently conducted in respect to said [*pledge*] and so carelessly used the same, that it became, by reason of his negligence and carelessness, greatly damaged [*state briefly the injury, in its nature and extent, as the case was*], to the damage of the plaintiff . . . . .dollars.

III. [*If the loan has been paid allege the fact.*]

WHEREFORE, etc.

### 1330. Against warehouseman for loss of goods.

I. That on the . . . day of . . . . ., 19 . . ., the defendant

was a warehouseman engaged in the business of storing goods for hire at the city of . . . . ., in said county [*if the defendant is a corporation, or if a copartnership is sued, allege corporate or copartnership character as in Forms given in Chapter XIX*].

II. That on the . . . day of . . . . ., 19 . . ., at . . . . ., the defendant, in consideration of the sum of . . . . . dollars, then and there paid [*or, agreed to be paid; or, or a reasonable compensation agreed to be paid*] by the plaintiff, agreed to store and safely keep in his warehouse at . . . . . certain merchandise, the property of the plaintiff, of the value of . . . . . dollars, consisting of [*here briefly describe the goods*] until the same should be called for by the plaintiff [*or, for the term of two months from said date, or otherwise*], and then safely to deliver said goods to the plaintiff [*or his order*] at his request, and then and there received the same for that purpose.

III. That the defendant neglected to take proper care of said merchandise; and through the defendant's negligence the same became wholly lost to the plaintiff, to his damage . . . . . dollars.

WHEREFORE, etc.

**1331. The same, for injury to goods by neglect to obey instructions.**

[*I and II as in preceding Form.*]

III. That at the time of the delivery of said goods to the defendant the plaintiff caused the defendant to be informed that it was necessary to the preservation of said goods that they should be kept in a dry condition [*or, be handled with care*].

IV. That the defendant negligently allowed the same to become wet [*or, to be handled without care, and roughly moved and broken*], so that the same, through the negligence of the defendant and his servant, became greatly injured [*or, entirely ruined*], to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1332. The same, for refusal to deliver.**

[*I and II as in preceding form.*]

III. That on the . . . day of . . . . ., 19 . . ., at . . . . ., the plaintiff requested the defendant to deliver the said



goods, and tendered him ..... dollars [or, the amount due thereon for storage], but the defendant refused and has ever since refused to deliver the same; to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

**1333. The same, for not forwarding goods according to agreement.**

I. That at the time hereinafter mentioned, the defendant was a forwarding agent and keeper of a warehouse at ..... for the reception of goods intended to be forwarded by him for hire, from ..... to .....

II. That on the .... day of ....., 19.., the defendant received from the plaintiff certain merchandise, to-wit [*briefly describing it*] the property of the plaintiff, of the value of ..... dollars, which he undertook for hire to forward in a reasonable time from .... to .... by [a vessel], and meanwhile to store and safely keep the same.

III. That after the defendant received said goods such a [vessel] did, within a reasonable time then following, proceed from said .... to ....., and the defendant might and ought to have delivered the said goods to the [master of such vessel] for the purpose aforesaid.

IV. That the defendant did not do so, or otherwise forward said goods within a reasonable time, but kept and detained the same in his said warehouse, for a long and unreasonable time, to-wit, two months, whereby the said goods perished; to the damage of the plaintiff ..... dollars.

[*If special damage is sought to be recovered the facts should be set forth*].

WHEREFORE, etc.

**1334. Against a telegraph company for failure to deliver a message according to contract.<sup>2</sup>**

I. That at the times hereinafter mentioned, the defendant was and now is a foreign corporation organized and existing

<sup>2</sup>While telegraph companies are not strictly common carriers at common law, they are frequently so called and their obligations to the public are analogous to those

of common carriers in that they exercise a public employment and must forward all messages presented to them without discrimination upon which the regulated

under the laws of the state of . . . . . owning and operating a public line of telegraph between . . . . . and . . . . . and held itself out to the public to be and in fact was a common carrier of telegraphic messages for hire between the said places above named.

II. That on the . . . . day of . . . . ., 19.., the plaintiff wrote and delivered to the said defendant at its office at . . . . . a telegraphic message addressed to one M. . . . N. . . . at . . . . . which message was in words and figures as follows [*insert copy of message*] and then and there paid to the defendant the sum of . . . . . cents, which was the fee demanded by the said defendant for the transmission of said message, and the said defendant then and there agreed with the plaintiff in consideration of the fee so paid to forward said message at once and deliver the same to said M. . . . N. . . .

III. That the defendant carelessly and negligently failed and neglected to forward or deliver said message for the space of . . . . days, so that the same was not delivered to or received by said M. . . . N. . . . until the . . . . day of . . . . ., 19.., whereas the same in the ordinary course of prompt transmission and delivery should have been delivered on the said . . . . day of . . . . ., 19..

IV. [*Allege facts showing damage, e. g.*]: That the plaintiff was at the time of the delivery of said message to the defendant a dealer in grain and was possessed of . . . . . thousand bushels of wheat, and that his object and purpose in the

fee is tendered or paid. They cannot contract to be relieved against responsibility for their own negligence, though they may make reasonable rules regulating their responsibility. *Candee v. W. U. Tel. Co.*, 34 Wis. 471; *Thompson v. W. U. Tel. Co.*, 64 Wis. 531; 25 N. W. 789.

In the absence of statute, they are liable only for such damages for negligence as arise naturally from the failure to transmit, or may reasonably be supposed to have been in contemplation of the parties as the probable result of a breach. *Candee v. W. U. Tel. Co.*, *supra*. Hence, where the message is in cipher, or does not on its face

show its import to the agent receiving it, it must be alleged and proven that the receiving agent knew or was notified of the facts showing the purpose of the message and the probable result of a failure to transmit it.

In many of the states the liability is statutory: Wis. Stats. 1913 sec. 1778, subsec. 4; Ark. Dig. of Stats. 1904 sec. 7943-44; Iowa Ann. Code 1897 sec. 2163; Minn. Gen. Stats. 1913 sec. 6259; Mo. R. S. 1909 sec. 3334; Neb. R. S. 1913 sec. 7406. In Texas the rule seems to be that damages are recoverable for failure to use proper care in transmission; *W. U. T. Co. vs. McDonald*, 42 Tex. Civ. App. 229; 95 S. W.

sending of said telegram to said M. . . . N. . . . was to authorize and empower said M. . . . N. . . . to sell for the plaintiff at the market price the said . . . . thousand bushels of wheat, which price on said . . . . day of . . . . ., 19. . . , was . . . . cents per bushel, all of which facts were well known to the defendant, and that had said telegram been forwarded and delivered by defendant with reasonable promptness the said M. . . . N. . . . would have sold said wheat for said price; but that on account of the defendant's said failure to forward and deliver said message the said M. . . . N. . . . did not sell said wheat until the . . . . day of . . . . ., 19. . . , at which time the market price thereof had fallen to . . . . cents per bushel, and the plaintiff thereby was damaged in the sum of . . . . . dollars.

WHEREFORE, etc.

### 1335. Same, to recover for mental anguish.

*[I, II and III as in last preceding forms with such changes as may be necessary to fit the facts.]*

IV. That on the date of said message the plaintiff's father was seriously ill at . . . . . and died on the following day; that by reason of the defendant's said careless and negligent failure to deliver said telegram, as aforesaid, the plaintiff was prevented from attending upon his said father

691; W. U. T. Co. vs. Simmons, 93 S. W. 686.

In some states telegraph companies are called "common carriers" by statute: Minn. Gen. Stats. 1913 sec. 6256; Neb. R. S. 1913 sec. 6124; N. Dak. Rev. Codes 1905 sec. 5672; S. Dak. C. C. 1908 sec. 1577; Okla. Comp. Laws 1909 sec. 490; and the statutes of some states declare that such companies are bound to the utmost diligence in the transmission of messages: Cal. C. C. 1906 sec. 2162; Mont. Rev. Codes 1907 sec. 5331; N. Dak. Rev. Codes 1905 sec. 5671; S. Dak. C. C. 1908 sec. 564 and 1576.

By statute in a number of states messages are required to be transmitted in the order received, with certain specified exceptions: Ark. Dig. of Stats. 1904 sec. 7943;

Colo. Stats. Ann. 1911 sec. 987; Minn. Gen. Stats. 1913 sec. 6258; N. Dak. Rev. Codes 1905 sec. 5699; S. Dak. C. C. 1908 sec. 564 and 1604; Okla. Comp. Laws 1909 sec. 517; Oregon Laws 1910 sec. 6261; Wash. Rem. and Bal. Code, 1910 sec. 9306.

In the following states damages for mental anguish are recoverable: Wisconsin, (Wis. Stats. 1913 sec. 1778, subsec. 5); Arkansas, (Ark. Dig. of Stats. 1904 sec. 7917); Texas (W. U. T. Co. vs. Beringer, 84 Texas, 38; 19 S. W. 336).

The form here given has not been taken from any precedent but it is believed to outline correctly the facts necessary to be alleged, which in every case will be subject to variation.

in his last illness and was unable to see his said father prior to his death, which fact caused the plaintiff great suffering and mental anguish, by which he suffered damage in the sum of .....dollars.

WHEREFORE, etc.

**1336. Against express company for failure to deliver money.**

I. [*Allege defendant's incorporation, as in Forms 848 or 849.*]

II. That defendant was at the times hereinafter mentioned a common carrier engaged in the carriage of express matter for hire, including moneys, between the city of .....and the city of.....

III. That on the....day of....., 19.., the plaintiff delivered to the defendant and the defendant accepted as such carrier at its office in.....the sum of.....in United States currency to be transported to the city of ....., and there delivered to G.... H.... the plaintiff's agent, and that plaintiff then paid to defendant for such service the sum of ..... dollars, being the amount required by defendant therefor.

IV. That the said currency was properly enclosed and sealed and directed to the plaintiff's said agent.

V. That plaintiff has duly demanded delivery of said money from the defendant at its offices at [*name destination*] but that defendant has not delivered the same, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1337. By assignee of warehouse receipt for refusal to deliver grain.**

I. That at the times hereinafter named the defendant kept a public warehouse at.....for the storage of grain for hire.

II. That on the....day of....., 19.., one E.... F.... delivered to the defendant at said warehouse for storage ....bushels of oats, the property of said E.... F...., which was of the value of.....dollars, and was then and there received by defendant for storage for hire, and a receipt

was duly issued by defendant to said E.... F.... for the same.

III. That said E.... F...., on the....day of....., 19.., sold said oats to the plaintiff and transferred and delivered to plaintiff said receipt, and plaintiff ever since has been and still is the owner thereof.

IV. That on the....day of....., 19.., the plaintiff presented said receipt to the defendant and offered to pay all storage and other proper charges on said oats, and demanded delivery of the same, but the defendant refused to deliver any part thereof, to the plaintiff's damage ..... dollars.

WHEREFORE, etc.

### 1338. Complaint against railroad company for death and injury to stock shipped.

I. [*Allege incorporation of defendant, and that it was a common carrier of live stock between the places of shipment and delivery of the stock.*]

II. [*Allege the delivery by plaintiff to defendant of the stock and the agreement that the same should be transported for hire to the place of delivery; allege also the value of the stock.*]

III. [*Allege that by reason of the negligence of the defendant in the course of the transportation of the stock they died, or that part died, and part were reduced in weight or quality, according to the fact.*]

IV. [*Allege in what particulars the defendant was negligent, whether in failing to feed and water, or in jerking the cars violently about, by delay, or otherwise, as the fact may be.*]

V. [*State the value of the stock which died and the amount of the reduction in value of the balance, as the fact may be.*]

WHEREFORE, etc.

### 1339. Complaint against railroad company for negligent delay in furnishing cars.

I. [*Allege incorporation of defendant, and that it was a common carrier of freight between the point of proposed shipment and delivery of the freight.*]

II. [*Allege the ordering of the cars by the plaintiff of the defendant and the purpose for which they were ordered; also the fact that at the time of such ordering and at the time when such cars should have been furnished, pursuant to the order,*



*the plaintiff had the property, which he proposed to ship and for which the cars were ordered ready to ship, and that defendant knew that fact.]*

IV. [*Allege the failure to furnish the cars or the unreasonable delay, and the fact that during such delay the market price of the property decreased, and how much, or if the damage resulted from the delay of perishable property, allege the fact, as the case may be.*]

V. [*Allege amount of the damage.*]

WHEREFORE, etc.

**1340. Against a common carrier for refusing to receive and carry goods.**

I. [*Allege corporate character of defendant as in Forms 848 or 849.*]

II. That the defendant is and was at the time hereinafter mentioned a common carrier of goods for hire from..... to.....

III. That on the....day of....., 19.., plaintiff tendered to defendant at....., at its place of business for the receipt of goods to be carried by it as such carrier certain goods [*describe them*], securely packed for transportation, and requested defendant as such carrier to receive and carry them from.....to its depot at.....

IV. That the plaintiff was then and there ready and willing, and offered to pay to the defendant its reasonable charges in that behalf [*or, the amount of its charge for such transportation*].

V. That the defendant refused to receive or carry the said goods for the plaintiff, and plaintiff has thereby sustained damages in the sum of.....dollars.

WHEREFORE, etc.

**1341. Against a railway company for not safely keeping goods left in the parcel-room.**

I. [*Allege incorporation and business of defendant as in Forms 848 or 849.*]

II. That the defendant has and maintains a passenger station at..... and has provided at the said station a parcel-room for the convenience and accommodation of passengers traveling on its road, and undertakes, for the

payment of ten cents per parcel, to take care of such parcels which may be left in the parcel-room in its charge by any passenger and to redeliver the same to such passenger upon request.

III. That on the....day of....., 19.., the plaintiff, who was a passenger upon the defendant's said railway, left his satchel at the said parcel-room in charge of the defendant so as to be taken care of and redelivered upon request as aforesaid, and paid the defendant the said fee of ten cents for the care thereof.

IV. That the defendant did not take care of the said satchel, and did not redeliver the same to the plaintiff upon his requesting them to do so, whereby the said satchel and its contents were lost to the plaintiff, to his damage..... dollars.

WHEREFORE, etc.

## CHAPTER LII.

### COMPLAINTS IN ACTIONS AGAINST SHERIFFS.

- |   |  |
|---|--|
| 1342. For neglecting tax return execution.                      | 1346. For seizing exempt property.                     |
| 1343. For neglecting to levy.                                   | 1347. For a false return.                              |
| 1344. For failure to arrest on execution against the body.      | 1348. For an escape, common form.                      |
| 1345. For neglecting to pay over moneys collected on execution. | 1349. For escape from custody upon an order of arrest. |
|   | 1350. Upon sheriff's liability as bail.                |

The forms in this chapter are designed to be used in actions against the sheriff alone for breach of official duty resulting in damage. They are not suitable for actions upon the sheriff's bond, forms for that purpose being given in Chapter XXXI. Where the sheriff has wrongfully levied on property or made an unlawful arrest an ordinary complaint for trespass to property or person will be sufficient without mention of his official character.

#### 1342. For neglecting to return execution.

I. That at the time of the issuing of the execution hereinafter mentioned, the defendant was the sheriff of the county of . . . . . in this state.

II. That on the . . . . day of . . . . ., 19 . . ., in an action in the . . . . . court for the county of . . . . . state of . . . . . [*or other court, or, before K. . . . L. . . ., a justice of the peace in and for the town of . . . . . in the county of . . . . . in this state*], wherein this plaintiff was plaintiff and one M. . . . N. . . . was defendant [*or otherwise*] the plaintiff recovered a judgment duly given by said court, against the said M. . . . N. . . . for . . . . . dollars [*or, where the judgment was in a justice's court, duly given by said justice against said M. . . . N. . . . for . . . . . dollars, which judgment was thereafter duly docketed in the office of the clerk of the . . . . . court of . . . . . county*]. [*Or otherwise, as required by statute.*]

III. That on the . . . . day of . . . . ., 19 . . ., an execution against the property of said M. . . . N. . . . was duly issued by this plaintiff on said judgment, and directed and then de-

livered to the defendant, as sheriff of the county of . . . . . of which execution the following is a copy [*copy of the execution and indorsement*], [*or state its substance, e. g., thus: where- by said defendant was directed to satisfy said judgment out of the personal property of said M. . . . N. . . . , in said . . . . . county, or if sufficient personal property could not be found, out of the real property belonging to him on the day when said judgment was docketed in said . . . . . county, or at any time thereafter, and return said execution to . . . . within sixty days after the receipt thereof by him*].

IV. That although [more than] sixty days elapsed after delivery of said execution to the defendant, and before the commencement of this action, yet he has, in violation of his duty as such sheriff, failed to return the same, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

#### 1343. For neglecting to levy.

I, II and III. [*As in preceding form.*]

IV. That although at the time of the said delivery of the execution to the defendant, there was within said county personal property [*or, real estate*] belonging to the defendant, to-wit [*designate it briefly*] out of which the defendant might have satisfied the execution, of which property he then and there had notice; nevertheless, in violation of his duty as such sheriff he failed to levy the moneys or any part thereof, as by said execution he was required to do, to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

#### 1344. For failure to arrest on execution against the body.

I, II and III. [*As in preceding form, except that it should be alleged that the execution ran against the person.*]

IV. That on the . . . . day of . . . . ., 19. . . , and while said execution was still in the hands of said sheriff, the said M. . . . N. . . . was within the said county to the knowledge of the said defendant sheriff and within his view, but that the said sheriff, in violation of his duty and the command of said execution, wilfully neglected to arrest the said M. . . . N. . . . and falsely made return upon said execution, that

said M.... N.... was not found within said county, to plaintiff's damage ..... dollars.

WHEREFORE, etc.

**1345. For neglecting to pay over moneys collected on execution.**

I. That at the times hereinafter mentioned, the defendant was the sheriff of the county of ..... in this state.

II. That on the .... day of ....., 19.., an execution, then duly issued, in form and effect as required by law, against the property [*or*, the person] of one M.... N.... and in favor of the plaintiff, upon a judgment for the sum of ..... dollars theretofore duly given in favor of the plaintiff against said M.... N.... in the ..... court of ..... county was by the plaintiff directed and delivered to the defendant as such sheriff.

III. That the defendant thereafter, as such sheriff, collected and received upon said execution, to the use of the plaintiff, the sum of ..... dollars, besides his lawful fees and poundage.

IV. That although [more than] sixty days elapsed, after the delivery of said execution to the defendant, before this action, yet he has, in violation of his duty as such sheriff failed to pay over to the plaintiff the amount so collected, or to pay the same into court, to the damage of the plaintiff in the sum of ..... dollars.

WHEREFORE, etc.

**1346. For seizing exempt property.**

[*See forms for conversion and for injuries to personal property given in Chapters XLVII and XLVIII.*]

**1347. For a false return (Bacon v. Cropsey, 7 N. Y. 195).**

I. That at the time of the issuing and return of the execution hereinafter mentioned, the defendant was the sheriff of the county of ..... in this state.

II. That on the .... day of ....., 19.., this plaintiff recovered a judgment duly given by the ..... court in and for the county of ..... [*or other court*] against one M.... N.... for ..... dollars. [*Or as in first form in this Chapter.*]

III. That on the .... day of ....., 19.., an execution



against the property of said M.... N.... [*or, if the judgment was against several joint debtors on service of part only, say: against the joint property of M.... N.... and O.... P.... and against the separate property of O.... P....*] was duly issued upon said judgment by the plaintiff, and directed and then delivered to the defendant as such sheriff, of which execution, and the indorsement thereon, the following is a copy [*or, whereby the defendant was required, etc., stating effect as in first form in this chapter*].

IV. That the defendant as such sheriff, did, within sixty days thereafter, by virtue of said execution, levy on certain personal property of said M.... N.... within said county, of the value sufficient to satisfy said judgment [*or, said judgment in part, to-wit, to the amount of ..... dollars*] together with the defendants' fees and poundage.

V. That notwithstanding the premises, and in violation of his duty as sheriff, he did not satisfy said judgment or any part thereof; but has falsely returned upon said execution to the clerk of the county of ..... that said M.... N.... had not any goods or chattels within said county, whereby he could cause to be levied the amount of said judgment, or any part thereof, to the damage of the plaintiff ..... dollars.

WHEREFORE, etc.

### 1348. For an escape, common form.

I. That at the time of the issuing of the execution and of the escape hereinafter mentioned, the defendant was the sheriff of the county of ..... in this state.

II. That on the .... day of ....., 19.., in an action brought in the Supreme Court of this state, in the county of ..... [*or other court*] by this plaintiff against one M.... N.... [*or, by one M.... N.... against this plaintiff*] for wrongfully converting property [*or state other cause authorizing arrest*] this plaintiff recovered judgment, duly given by said court, against said M.... N.... for ..... dollars.

III. That on the .... day of ....., 19.., an execution against the property of said M.... N.... was duly issued by this plaintiff on said judgment, and thereafter duly returned wholly unsatisfied [*if partly satisfied, add: except as to the sum of ..... dollars*].

IV. That thereafter and on the . . . . day of . . . . ., 19. . . , an execution against the person of the said M. . . . N. . . . was duly issued by this plaintiff on said judgment, and then directed and delivered to the defendant as said sheriff, whereby he was required to arrest said M. . . . N. . . . and to commit him to the jail of said county of . . . . . until he should pay said judgment, or be discharged according to law.

V. That thereafter the defendant, as such sheriff, arrested said M. . . . N. . . . and committed him to jail, pursuant to said execution; but in violation of his duty as such sheriff, has since, to-wit, on the . . . . day of . . . . ., 19. . . , without the consent of the plaintiff, permitted said M. . . . N. . . . to escape [*or, but since then, to-wit, on the . . . . day of . . . . ., 19. . . , said M. . . . N. . . . went and was at large without the limits of the liberties of said jail, without the assent of the plaintiff*] to the damage of the plaintiff . . . . . dollars.

WHEREFORE, *etc.*

**1349. For escape from custody upon an order of arrest.**

I. [*As in preceding form.*]

II. That on the . . . . day of . . . . ., 19. . . , in an action brought in the . . . . . court of this state, in the county of . . . . . [*or other court*] by this plaintiff against one M. . . . N. . . . for wrongfully converting property [*or other cause authorizing arrest*] an order was duly made by Hon. J. . . . K. . . . judge of said court, whereby the defendant, as such sheriff, was required to arrest the said M. . . . N. . . . and hold him to bail in the sum of . . . . . dollars.

III. That thereafter and on the . . . . day of . . . . ., 19. . . , said order was duly delivered to the defendant, as said sheriff, to be executed.

IV. That thereafter the defendant, as such sheriff, arrested said M. . . . N. . . . and committed him to jail, pursuant to said order; but in violation of his duty as such officer, has since, to-wit, on the . . . . day of . . . . ., 19. . . , without the consent of this plaintiff, permitted said M. . . . N. . . . to escape [*or, but since then, to-wit, on the . . . . day of . . . . ., 19. . . , said M. . . . N. . . . went and was at large without the*

limits of the liberties of said jail, without the assent of the plaintiff] to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

**1350. Upon sheriff's liability as bail (Metcalf v. Stryker, 31 N. Y. 255, affirming 31 Barb. 62, 10 Abb. Pr. 13).<sup>1</sup>**

I. That at the times hereinafter named, the plaintiffs were co-partners, doing business in the city of New York, under the firm name of M. . . . & D. . . .

II. That the defendant was sheriff of the county of . . . . on and from the . . . . day of . . . . ., 19. . ., to the . . . . day of . . . . ., 19. . .

III. That an order of arrest, of which a copy is annexed as part of this complaint, marked Schedule B, was duly made by J. . . . K. . . . at that time a judge of the . . . . . court of this state, and delivered to the said defendant, on or about the . . . . day of . . . . ., 19. . ., in an action in said court, wherein these plaintiffs were plaintiffs, and one G. . . . H. . . . was defendant, requiring the defendant in this action to arrest and hold to bail, in the sum of . . . . . dollars, the said G. . . . H. . . .

IV. That thereupon the defendant arrested said G. . . . H. . . . on or about the . . . . . day of . . . . ., 19. . . [in North Dakota and South Dakota insert, that there was at that date a jail within the county of . . . . . to which said G. . . . H. . . . could have been committed] and thereafter said sheriff permitted him to escape from his custody; and on or about the . . . . day of . . . . ., 19. . ., the said defendant delivered to the plaintiff's attorneys, by whom the order of arrest was subscribed or indorsed, a paper purporting to be a certified

<sup>1</sup>This form is adapted for use under the provisions of the statutes of the following states, all of which provide that in case of civil arrest the sheriff shall be liable as *bail* for an escape in case the required bail has not been given: Wis. Stats. 1913 sec. 2712; Ark. Dig. of Stats. 1904 sec. 329; Cal. C. C. P. 1906 sec. 501; Idaho Rev. Codes 1908 sec. 4263; Kans. Gen. Stats. 1909 sec. 5757; Mont. Rev. Codes

1907 sec. 6618; N. Dak. Rev. Codes 1905 sec. 6912; S. Dak. C. C. P. 1908 sec. 179; Oregon Laws 1910 sec. 276; Utah Comp. Laws 1907 sec. 3032; Wash. Rem. and Bal. Code 1910 sec. 772; Wyo. Comp. Stats. 1910 sec. 4834.

There are no provisions for civil arrest in Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Oklahoma or Texas. See Chap. VIII, note 1.

copy of an undertaking of the bail taken by him upon the discharge of the said G.... H.... from arrest, a copy of which is annexed as a part of this complaint, and marked Schedule A; but the same was not executed by two or more sufficient bail, and did not state their places of residence and occupations, according to law; and that on the next day, that is to say, on or about the .... day of ....., 19.., a notice was duly served on the defendant, that the plaintiffs did not accept the said bail, but after the receipt of the said notice by the defendant, neither the defendant nor the said G.... H.... gave to the plaintiffs or their attorneys, by whom the said order of arrest was subscribed, notice of the justification of the same, or of other bail, before a judge of the court, at any specified time or place, nor any justification, or other notice of justification, as required by law.

V. That on the .... day of ....., 19.., the plaintiffs obtained judgment in said action against said G.... H.... for ..... dollars, and on the .... day of ....., 19.., caused [to be filed a transcript of said judgment in the office of the clerk of the ..... court, and] an execution to be duly issued to the then sheriff of said county, upon said judgment, against the property of said G.... H.... which was thereafter returned by said sheriff, wholly unsatisfied; and thereafter, and on the .... day of ....., 19.., an execution against the person of said G.... H.... was duly issued to the said sheriff, which has also been returned by the said sheriff "defendant not found."

VI. That the said judgment has not been paid, nor any part thereof; but the same is still unpaid, and in full force.

VII. That the amount of said judgment and interest was duly demanded of said defendant, before the commencement of this action, and the payment of the same refused.

VIII. That by reason of the premises the plaintiff has suffered damage in the sum of ..... dollars.

WHEREFORE, etc.

## CHAPTER LIII.

### COMPLAINTS FOR ASSAULT AND BATTERY.

- |  |   |
|--|---|
| 1351. For assault and battery, short form.                             | 1357. For forcible ejection of passenger from a street car.               |
| 1352. For the same, alleging particulars and claiming special damages. | 1358. Complaint for forcible ejection of passenger from a railroad train. |
| 1353. For assault and battery with accompanying false imprisonment.    | 1359. For forcible ejection of trespasser from passenger car.             |
| 1354. For the same, another form.                                      | 1360. For wilful injury in ejecting trespasser from railroad train.       |
| 1355. For the same, another form.                                      | 1361. For indecent assault.   |
| 1356. For assault on servant or child.                                 |   |

#### 1351. For assault and battery, short form.

That on the....day of....., 19.., at...., the defendant unlawfully and maliciously assaulted and beat the plaintiff, to his damage.....dollars.

WHEREFORE, etc.

#### 1352. For the same, alleging particulars and claiming special damages.

That on the....day of....., 19.., at....., the defendant violently and maliciously assaulted the plaintiff, and struck him in the face and breast several violent blows, and aimed at him a gun and threatened to shoot him, whereby he put the plaintiff in fear for his life; and maliciously caused a dog to bite the plaintiff; and also tore the clothes from plaintiff's person [*or otherwise describe the violence used, and its consequences; special damage, if any, being stated, thus:* and the plaintiff was thereby made ill and lame, and disabled from attending to his business for.....thereafter, and was compelled to pay.....dollars for medical attendance, and has been ever since, and for a long time will be lame], to his damage.....dollars.

WHEREFORE, etc.



**1353. For assault and battery with accompanying false imprisonment.**

That on the...day of....., 19.., at....., the defendant assaulted and beat the plaintiff, and falsely and maliciously imprisoned him, without reasonable cause and without right [and detained him for...hours, preventing him from attending to his business] to his damage..... dollars.

WHEREFORE, etc.

**1354. For the same, another form.**

That the defendant, on the...day of....., 19.., at....., unlawfully and maliciously made an assault upon the plaintiff, seized hold of him and violently forced the plaintiff along the public streets to the common jail of said county, and then and there imprisoned and detained the plaintiff in said jail for...days, without any reasonable or probable cause whatever, contrary to law and against the will of the plaintiff, to the plaintiff's damage.....dollars.

WHEREFORE, etc.

**1355. For the same, another form (sustained in Sheldon v. Lake, 9 Abb. Pr. (N. Y.) 306).**

I. That on or about the...day of....., 19.., at....., the defendant with force and arms assaulted the plaintiff, and with great force and violence pulled and dragged about the said plaintiff, and also then and there forced and compelled the said plaintiff to go from a certain place in said city into the public streets thereof, and then and there forced and compelled him to go in and along divers public streets in said city, and then and there imprisoned the said plaintiff, and put him in the custody of the sheriff of the county of.....and detained him for the period of several days in said custody, and restrained and deprived the said plaintiff of his liberty without any reasonable or probable cause whatsoever.

II. That all of the malicious acts aforesaid were against the will of the said plaintiff, whereby the said plaintiff was not only greatly hurt, bruised and wounded, but was also thereby then and there greatly exposed and injured in his

credit and circumstances, and was then and there hindered and prevented from performing and transacting his affairs and business, by means whereof said plaintiff says he has sustained damages to the amount of.....dollars.

WHEREFORE, etc.

**1356. For assault on servant or child.**

That on the....day of....., 19.., defendant made an assault upon A....B.... the servant [son, daughter, or wife] of the plaintiff, and so beat, wounded and ill-treated him [or, her] that he [or, she] was rendered sick and unable to perform labor, and so remained for...months, during all of which time the plaintiff was deprived of the services of the said A....B.... and was obliged to expend.....dollars for medical attendance and nursing for said A....B.... to the damage of plaintiff in the sum of.....dollars.

WHEREFORE, etc.

**1357. For forcible ejection of passenger from a street car (adapted from complaint in *Vassau v. Street Ry. Co.*, 106 Wis. 301; 82 N. W. 152).**

I. That the defendant is now and was at the times hereinafter named a street railway corporation organized and existing under the laws of the state of Wisconsin and owned and operated a line of street railway upon certain streets in the city of Madison, whereon it carried passengers for hire as a common carrier.

II. That on the....day of....., 19.., the defendant received the plaintiff into one of its street cars as a passenger, and the plaintiff paid to the conductor in charge of said car the full and regular fare and in all respects complied with the rules and regulations of the defendant relative to the receiving and transporting of passengers over its said line of railway.

III. That after plaintiff had ridden a distance of five or six blocks upon said car, and had so paid his fare, the said conductor in loud and insulting language and in presence of other passengers falsely charged that the plaintiff had given and passed to him the said conductor in payment of his fare a piece of counterfeit money and demanded that the plaintiff pay his fare or leave said car.

IV. That the charge so made by said conductor was false and that the plaintiff refused to pay his fare a second time and refused to leave said car until he had reached his destination, and thereupon the said conductor stopped the said car and again charged the plaintiff in an insulting manner with passing counterfeit money and ordered the plaintiff to leave the car, and upon plaintiff's refusal so to do forcibly and violently and in the presence of a large number of passengers ejected the plaintiff from said car before reaching his destination, and would not permit him to ride further.

V. That by reason of the premises the plaintiff was greatly injured in his person [*allege physical injuries, if any*] and suffered great mortification and injury to his feelings by reason of the public insult so inflicted upon him, to his damage in the sum of . . . . .dollars.

VI. [*Allege special damage suffered, if any.*]

WHEREFORE, etc.

**1358. Complaint for forcible ejection of passenger from a railroad train (adapted from Washburn v. Railroad Co., 84 Wis. 251; 54 N. W. 504).**

I. That the above named defendant is and was at the times hereinafter mentioned a railway corporation duly created, organized and existing under and by virtue of the laws of the state of Wisconsin, and owned and operated a railroad in the said state of Wisconsin extending from the city of . . . . .to the city of . . . . . in said state, and was and is a common carrier of passengers between the said cities.

II. That on or about the . . . . .day of . . . . ., 19. . ., this plaintiff purchased a ticket of passage on the defendant's said railway entitling the plaintiff to be carried upon a passenger train of the defendant from the city of . . . . .to the city of . . . . .and thereupon entered one of the passenger cars of the defendant at said city of . . . . . upon the regular passenger train of the defendant leaving the said city of . . . . . at . . . . .o'clock on the said . . . . .day of . . . . ., 19. . .

III. That after the defendant had carried the plaintiff as such passenger a distance of a few miles in its said car and train toward the city of . . . . .the said defendant by its agents, servants and employees, wrongfully and unlawfully and with force and violence and while said train was moving

rapidly and at a place other than a usual stopping place and not near any dwelling house, ejected and turned this plaintiff out of and from said car and train, and wrongfully declined and refused to carry or further transport the plaintiff on its said road.

IV. That in removing and ejecting the plaintiff from said car and train as aforesaid, the agents and employees of the defendant violently assaulted and wounded the plaintiff so that he became and was unconscious for some time after he was ejected from said train, and that in consequence of such assault and ejection the plaintiff was rendered sore, lame and bruised for a long time, suffered great pain and anguish in mind and body and, as plaintiff is informed and believes, is permanently injured and disabled in consequence thereof.

V. That by reason of the premises and of the aforesaid wrongful acts of the defendant and its agents and employees, plaintiff has been damaged in the sum of . . . . . dollars.

WHEREFORE, etc.

**1359. For forcible ejection of trespasser from passenger car.**

I. [*As in last preceding form.*]

II. That on or about the . . . day of . . . . ., 19 . . ., this plaintiff was upon one of the defendant's passenger cars at . . . . .

III. That while this plaintiff was upon said passenger car as aforesaid, he was violently assaulted and beaten by the defendant herein, its agents and servants, and was violently ejected from said passenger car by said defendant, its agent and servants at [*state place, showing it to be a dangerous or improper place and that it was not a regular stopping place nor near any dwelling*]; that the defendant's acts were of unnecessary force and brutality and not rendered necessary or justifiable by any resistance or force on plaintiff's part, and that the plaintiff's leg was broken thereby [*or state the injury according to the fact*].

IV. That by reason and in consequence of said assault, this plaintiff was greatly injured, bruised and wounded, and suffered great pain. [*State consequences fully.*]

V. That by reason of the premises plaintiff has sustained damages to the sum of . . . . . dollars.

WHEREFORE, etc.

**1360. For wilful injury in ejecting trespasser from railroad train.**

I. [*As in last preceding form.*]

II. That on or about the . . . day of . . . . ., 19 . . ., the said plaintiff, got on one of the passenger [*or freight*] cars of said . . . . . company, said car being one of a train bound from . . . . . to . . . . .; that soon after said plaintiff had so got on the said train and while he was upon the rear platform of said car [*or otherwise state where plaintiff was*], the said company, by its servant, to wit, the conductor of said train, wilfully and maliciously and with gross negligence pushed the said plaintiff off of said car while the same was in motion, the said plaintiff falling upon the track of said railroad, under the wheels of the rear car of said train, which thereupon passed over and crushed his leg, rendering the amputation thereof necessary in order to save the life of said plaintiff.

III. That the said leg was immediately thereafter amputated above the knee, and that in consequence of the said injury, the said plaintiff lost his said leg, was made sick and confined to his bed for over . . . . ., suffered great bodily pain, and has been rendered a cripple for life, and sustained damages to a very great amount, to wit, in the sum of . . . . . dollars.

WHEREFORE, etc.

**1361. For indecent assault.**

I. That on . . . . . 19 . . ., in the city of . . . . ., defendant wrongfully and indecently assaulted plaintiff and laid his hands upon her and solicited her then and there to have sexual intercourse with him.

II. That thereby plaintiff suffered a severe nervous shock and great distress of body and mind, to her damage . . . . . dollars.

WHEREFORE, etc.



## CHAPTER LIV.

### COMPLAINTS IN ACTIONS FOR MALICIOUS PROSECUTION.

- |  |  |
|--|--|
| 1362. For malicious prosecution on a criminal charge, where plaintiff was discharged on the preliminary examination. | 1365. For malicious arrest in a civil action; another form.  |
| 1363. The same, where plaintiff was tried and acquitted.   | 1366. For maliciously suing out a warrant of attachment.   |
| 1364. For malicious arrest in a civil action.  | 1367. For maliciously obtaining the appointment of a receiver in an action for closing up a partnership. |

In an action for malicious prosecution there are three essentials: (1) that the prosecution was commenced by the defendant or at his instigation maliciously and without probable cause; (2) that such prosecution has finally terminated in plaintiff's favor; and (3) that the plaintiff has suffered legal damage by reason of such prosecution. The prosecution may have been either a civil or criminal one, but if it be a civil prosecution this action cannot be maintained unless either the person or the property of the defendant be interfered with, thus inflicting special damage. *Luby v. Bennett*, 111 Wis. 613, 87 N. W. 804; *Wetmore v. Mellinger*, 64 Iowa, 741; 18 N. W. 870.

**1362. For malicious prosecution on a criminal charge, where plaintiff was discharged on the preliminary examination.**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the defendant, maliciously intending to injure the plaintiff in his good name and credit, appeared before E. . . . F. . . . , justice of the peace of said county, and maliciously, without any probable cause whatsoever, made complaint on oath before said justice, charging the plaintiff with having [*briefly state offense charged*]; and maliciously and without probable cause procured said justice to issue a warrant for the arrest of the plaintiff upon the said false charge.

II. That the said justice on said day issued said warrant accordingly, and the plaintiff was arrested and imprisoned under the same for . . . . hours and was obliged to, and actually did, give bail in the sum of . . . . . dollars in order to obtain his release.

III. That afterwards, and on the . . . . day of . . . . ., 19. . ., the plaintiff was examined before the said justice on the said charge, and upon such examination it was found and adjudged by said justice that there was no probable cause to believe the plaintiff guilty of said crime, or of any crime whatever, and thereupon the plaintiff was discharged by said justice, since which time the defendant has not further prosecuted said complaint, but has abandoned the same.

[IV. That the said charge, and the arrest of the plaintiff thereunder were extensively published in several public newspapers, among others the Q. . . . Z. . . . as the plaintiff believes, through the procurement of the defendant.]

V. That by means of the premises the plaintiff was injured in his person, and prevented from attending to his business, and was compelled to pay . . . . . dollars costs, counsel fees in defending himself, and . . . . . dollars in obtaining bail; and in consequence of the arrest and detention he lost his situation as servant of O. . . . P. . . .; and many persons, hearing of the said arrest, and supposing the plaintiff to be a criminal, have refused to employ him, to his damage in the sum of . . . . . dollars.<sup>1</sup>

WHEREFORE, etc.

**1363. The same, where plaintiff was tried and acquitted.**

[*Proceed as in preceding form and insert in place of allegation III, the following*]:

III. That thereafter, and on the . . . . day of . . . . ., 19. . ., the plaintiff was tried upon the said charge, by the . . . . . court and a jury, and was then and there acquitted and discharged, whereby said prosecution was wholly and finally terminated.

<sup>1</sup>Under very familiar rules special damages, such as loss of employment or trade, or expenses of defense, can not be recovered un-

less specially alleged; whereas, damages naturally resulting may be recovered under the general averment of damage.

**1364. For malicious arrest in a civil action.**

I. That on the . . . . day of . . . . ., 19.., at . . . . ., the defendant, maliciously intending to injure the plaintiff, and without probable cause, made affidavit in an action then brought [or depending] against the plaintiff by L. . . . M. . . . in which he falsely and maliciously alleged [*here set forth the grounds of the false arrest*]; and that upon said affidavit the defendant procured to be issued an order of arrest against the plaintiff, under which the plaintiff was arrested and imprisoned for the space of . . . . . and compelled to give bail in the sum of . . . . . dollars.

II. That thereafter, and prior to the commencement of this action, said order of arrest was vacated by said court [or judge], upon the ground that [*here set forth briefly the grounds on which it was vacated*].

[Or: II. That thereafter, and prior to the commencement of this action, such proceedings were had in such action, that it was finally determined in favor of this plaintiff, and judgment was rendered for him therein.]

III. [*Allege damage as in the first form of this chapter.*]

WHEREFORE, etc.

**1365. For malicious arrest in civil action; another form.**

I. That on the . . . . day of . . . . ., 19.., at . . . . ., the defendant maliciously, and without probable cause, commenced an action against the plaintiff in the . . . . . court, upon a complaint duly filed therein, in which he falsely alleged that the plaintiff had theretofore and on the . . . . day of . . . . ., 19.. *here set forth briefly the grounds of the said action*].

II. That on said . . . . day of . . . . ., 19.., the defendant, maliciously made in said action a false affidavit, in which he falsely and maliciously averred that this plaintiff did, on said . . . . day of . . . . ., 19.. [*here set forth briefly the facts alleged in the affidavit as grounds of arrest*], and thereupon presented the same to the honorable J. . . . K. . . ., the circuit judge of said court, and demanded thereon an order for the arrest of this plaintiff.

III. That by said affidavit it was falsely made to appear that a sufficient cause of action existed for an order for the arrest of this plaintiff therein; and, thereupon the said judge

issued an order for the arrest of this plaintiff in said action, and holding him to bail in the sum of . . . . . dollars, which order the defendant delivered to the sheriff of said county.

IV. That thereupon the sheriff of said county, on the . . . . day of . . . . ., 19.., arrested the plaintiff by virtue of said order, and imprisoned him for the space of . . . . days, and compelled him to give bail in the sum of . . . . .dollars.

V. That thereafter, and prior to the commencement of this action, on motion of this plaintiff, the said order of arrest was vacated on the ground that the same had been issued improperly, and without a sufficient cause existing therefor.

[Or: That such proceedings were thereafter had in said action, that on the . . . . day of . . . . ., 19.., it was duly adjudged that the defendant had no cause of action, and that the plaintiff recover his costs in said action.]

VI. That by means of the premises the plaintiff was injured in his name and credit, prevented from pursuing his business, compelled to pay counsel fees in defending himself, to obtain bail, and was injured in his business, lost custom, trade and employment, in all to his damage . . . . . dollars.

WHEREFORE, etc.

**1366. For maliciously suing out a warrant of attachment.**

I. That on the . . . . day of . . . . ., 19.., the defendant, maliciously intending to injure the plaintiff, falsely and without probable cause, made and verified an affidavit for attachment against the property of the plaintiff, in a certain action then brought by said defendant against the plaintiff in the . . . . . court to recover the sum of . . . . . dollars.

II. That thereupon said defendant maliciously and without probable cause, caused a writ [or warrant] of attachment to be issued out of said court and levied upon plaintiff's property, to-wit [*describe the property levied upon*], which said property was thereupon taken into the possession of the [sheriff] of . . . . . county.

III. That afterward, on the . . . . day of . . . . ., 19.., said attachment, on motion of the plaintiff, was vacated and set aside, and said goods returned to the possession of the plaintiff.

*Or:* III. That thereafter, and before the commencement of this action, upon a trial duly had of the issue raised by the said affidavit of attachment, and the traverse thereof duly made by this plaintiff, it was finally adjudged and determined by the said court that no ground existed for the issuance of the said writ [*or* warrant] of attachment, and the said attachment was discharged by said court, and said property was returned to the possession of the plaintiff.

IV. [*Allege special damage, if any, as in preceding forms, or otherwise, according to the facts.*]

WHEREFORE, etc.

**1367. For maliciously obtaining the appointment of a receiver in an action for closing up a partnership (adapted from complaint approved in *Luby v. Bennett*, 111 Wis. 613; 87 N. W. 804).**

I. That said plaintiff and defendant were partners in trade in the . . . . . business at the city of . . . . . on the . . . . day of . . . . ., 19. . ., and had been such for . . . . years, and that each of said parties owned one half of the property and assets of said firm and was entitled to one half of the profits of said business, which profits amounted on the average to the sum of . . . . . dollars per year.

II. That on the . . . . day of . . . . ., 19. . ., the said defendant falsely, maliciously, and without probable cause commenced an action in the . . . . . court against this plaintiff, and by his complaint therein charged that this plaintiff had clandestinely taken from the store and property of said partnership, in money and goods, the sum of . . . . . dollars, and converted the same to his own use, and had sold large quantities of goods belonging to said firm without charging the same upon the books, thereby intending to collect pay for the same and convert such pay to his own use, and asked that said firm be dissolved and a receiver therefor appointed, and procured the appointment of himself as such receiver without notice to this plaintiff; that said defendant, as receiver aforesaid, took possession of said store and the stock, assets and business of said firm, and ousted this plaintiff therefrom, and afterward carried on said business as such receiver until . . . . ., 19. . ., at a great loss to this plaintiff, and as this plaintiff is informed and believes, bought the said



goods himself; and that the plaintiff has never received anything from the proceeds of the said business and sales.

III. That said action was begun by said defendant maliciously and without probable cause to believe his said charges to be true, but was brought for the fraudulent and wrongful purpose of obtaining sole control and possession of said business in order to cheat and defraud the plaintiff.

IV. That wide publicity was given to said action, and to the charges in said complaint, causing it to be widely believed that this plaintiff had been guilty of great wrongs therein, and was not honest or trustworthy in his business; that the good name and fame of this plaintiff was thereby greatly injured, and he was unable for four months thereafter to obtain employment by reason thereof; that in defending said action he was compelled to and did expend large sums of money for witnesses, expert bookkeepers, and for attorney and counsel fees, and other necessary expenses, amounting in all to . . . . . dollars.

V. That the said action was tried and determined in the said . . . . . court, and it was finally adjudged and decided in said action, on the . . . day of . . . . ., 19.., that the same was without foundation, and that this plaintiff was not and had not been guilty of any wrong, and judgment was awarded to this plaintiff therein.

WHEREFORE, etc.

## CHAPTER LV.

### COMPLAINTS IN ACTIONS FOR FALSE IMPRISONMENT.

- |  |   |
|--|---|
| 1368. For false imprisonment; short form, without special damages. | 1370. For false imprisonment under an order of arrest, void for want of jurisdiction. |
| 1369. Another form, alleging special damage.                       |   |

**1368. For false imprisonment; short form, without special damages (sustained in *Nixon v. Reeves*, 65 Minn. 159; 67 N. W. 989).**

I. That on the . . . . day of . . . . ., 19. . ., at the city of . . . . ., the defendant imprisoned the plaintiff for . . . . hours without probable cause, and that said act was done wilfully and maliciously in the presence of plaintiff's comrades, with the intent to humiliate and disgrace the plaintiff in the opinion of his associates.

II. That the plaintiff was damaged by reason of the premises, in the sum of one thousand dollars.

WHEREFORE, etc.

**1369. Another form, alleging special damage.**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . ., the defendant unlawfully and maliciously, and with intent to injure the plaintiff, by force [compelled the plaintiff to go with him to a police-office, or to the county jail, or *the like*, there situate, and there] imprisoned this plaintiff, and then and there detained him restrained of his liberty, for the space of . . . . hours, without reasonable cause, and without any right or authority so to do, and against the will of the plaintiff; whereby plaintiff was not only bruised and wounded, but was also injured in his credit, and was prevented from attending to his necessary affairs and business during that time, and was compelled to expend . . . . . dollars costs and counsel fees in obtaining his discharge, to his damage . . . . . dollars.

WHEREFORE, etc.

**1370. For false imprisonment under an order of arrest, void for want of jurisdiction.**

I. That on or about the .... day of ....., 19.., the defendant wrongfully and maliciously commenced an action against the plaintiff in the ..... court of ..... county, state of ....., and caused to be issued out of said court a certain pretended order of arrest in said action, and placed the same in the hands of L.... M.... the sheriff of said county for service, and caused the plaintiff to be arrested by the said sheriff, and held to bail, in the sum of ..... dollars; and that the plaintiff was unlawfully imprisoned by the said sheriff under the said pretended order of arrest for the space of .... days.

II. That the said order of arrest was illegal and unauthorized, for the reason that the said ..... court had no jurisdiction to issue said order in that [*here set forth the facts showing the want of jurisdiction, or other facts showing that the process was void*],<sup>1</sup> and that on the .... day of ....., 19.., said pretended order of arrest was duly vacated and set aside by order of the said court, for the reason that the same was issued without jurisdiction and was void.

III. That the plaintiff, at the time of said arrest, was engaged in business at the city of ..... as a [*state business*] and was compelled to give up said business by reason of said unlawful arrest, and was injured in his good name and credit among his friends and fellow townsmen, and suffered greatly in body and mind by reason of the disgrace and humiliation of said arrest and imprisonment, and was also put to expense in the sum of ..... dollars in securing his discharge from imprisonment.

IV. That by reason of the premises the plaintiff has suffered damages in the sum of ..... dollars.

WHEREFORE, etc.

<sup>1</sup> If the complaint shows that the arrest was made under legal process, the facts showing that the process was void for lack of jurisdiction or other cause must be

set forth, and it will not be sufficient merely to allege that the arrest was unlawful. *King v. Johnston*, 81 Wis. 578; 51 N. W. 1011.

## CHAPTER LVI.

### COMPLAINTS IN ACTIONS FOR SLANDER.

- |   |  |
|---|--|
| 1371. For speaking words actionable in themselves.                    | 1376. The same, for words spoken ironically.         |
| 1372. The same, when the slanderous words were in a foreign language. | 1377. For slander of title.                          |
| 1373. The same, for charge of perjury.                                | 1378. For words imputing unchastity to a woman.      |
| 1374. The same, for words imputing dishonesty in business.            | 1379. For ambiguous words with allegation of intent. |
| 1375. The same, for slander of an attorney.                           | 1380. Allegations of special injury in slander.      |

Slander and libel are cognate wrongs, both included within the general term "defamation;" slander is oral, and libel written or printed defamation. In order to be actionable *per se*, without allegation or proof showing special damage, slander must impute a criminal offense, a loathsome contagious disorder, or charge incompetency or dereliction in duty of a public officer, or of a person in his trade or profession. On the other hand, printed or written matter, or pictures, are libelous *per se* when they impute any of the matters above mentioned, but also when they impute any charge naturally tending to bring the person charged into public disgrace, ridicule, or contempt.

Where matter is slanderous or libelous *per se*, damages may be recovered simply under the general allegation of damage, but if special damage, such as loss of employment or business, is sought to be recovered, they must be alleged specially and with particularity, and if the matter complained of is not slanderous or libelous *per se*, special damages must be alleged, or the complaint will be demurrable.

There must be publication to others in all cases. The exact words written or spoken must be alleged in the complaint. If they are not actionable *per se*, extrinsic facts must be alleged by way of inducement which show their defamatory character. If spoken in a foreign language,

the exact words uttered must be set forth with a literally correct translation thereof.

Much particularity was formerly required to show their application to the plaintiff, but in the code states, as now provided by statute, it is sufficient if the complaint states generally that the alleged libelous or slanderous matter "was published or spoken concerning the plaintiff."<sup>1</sup>

### 1371. For speaking words actionable in themselves.

That on the .... day of ....., 19.., at ....., the defendant, in the presence and hearing of one M.... N.... [or, of a number of persons], maliciously spoke concerning the plaintiff the false and defamatory words following [*set out the words complained of as accurately as possible*]; whereby the plaintiff was injured in his reputation, to his damage ..... dollars.

WHEREFORE, etc.

### 1372. The same, when the slanderous words were in a foreign language.

I. That on or about the .... day of ....., 19.., the defendant, in the presence and hearing of M.... N.... [or, of a number of persons] who understood the [Danish] language, maliciously spoke concerning the plaintiff the false and defamatory words following, in the said [Danish] language, that is to say [*set forth the words in the foreign language just as spoken*] which said words being translated signified, and were understood by the said persons hearing them to mean [*set forth a correct translation of the words into English*].

II. That by reason of the speaking of said words the

<sup>1</sup> Wis. Stats. 1913 sec. 2677; Ariz. R. S. 1913 sec. 433; Ark. Dig. of Stats. 1904 sec. 6134; Cal. C. C. P. 1906 sec. 460; Colo. Code Ann. 1911 sec. 74; Idaho Rev. Codes 1908 sec. 4215; Iowa Ann. Code 1897 sec. 3592; Kans. Gen. Stats. 1909 sec. 5719; Mont. Rev. Codes 1907 sec. 9161; Minn. Gen. Stats. 1913 sec. 7778; Mo. R. S. 1909 sec.

1837; Neb. R. S. 1913 sec. 7699; N. Dak. Rev. Codes 1905 sec. 9861; S. Dak. C. C. P. 1903 sec. 141; Okla. Comp. Laws. 1909 sec. 5665; Oregon Laws 1910 sec. 91; Utah Comp. Laws 1907 sec. 2994; Wash. Rem. and Bal. Code 1910 sec. 292; Wyo. Comp. Stats. 1910 sec. 4413.



plaintiff has been injured in his reputation to his damage in the sum of ..... dollars.

WHEREFORE, etc.

**1373. The same, for charge of perjury.**

I. That on or about the .... day of ....., 19..., at a term of the ..... court of ..... county, in a certain action then pending therein between A.... B.... plaintiff and C.... D.... defendant, this plaintiff was duly sworn and testified as a witness touching certain matters material to the issue therein.

II. That on the .... day of ....., 19..., the defendant intending to injure the plaintiff and to cause it to be believed that he had been guilty of perjury, in the presence and hearing of divers persons, did maliciously and falsely speak of and concerning the plaintiff, and of and concerning his testimony aforesaid, the following false and malicious words, that is to say: "He [meaning the plaintiff] lied in that case [meaning the action aforesaid]," thereby meaning that the plaintiff in his testimony had committed the crime of perjury in the said action.

III. That by reason of the premises the plaintiff has been injured in his reputation and credit, to his damage in the sum of ..... dollars.

WHEREFORE, etc.

**1374. The same, for words imputing dishonesty in business.**

I. That at the times hereinafter mentioned plaintiff was engaged in business as a [merchant] at ..... and still is engaged in said business and in good reputation and credit.

II. That on the .... day of ....., 19..., the defendant, intending to injure the plaintiff, in the presence and hearing of many persons, falsely and maliciously spoke of and concerning the plaintiff in his said trade and business the false and defamatory words following, that is to say, "He [meaning the plaintiff] keeps false books." [*Or set out the slanderous words according to the fact, with the proper innuendoes.*]

III. That by reason of the premises the plaintiff has sustained great loss and damage, and many persons, to-wit, A.... B...., and C.... D.... and E.... F...., who were

accustomed to deal with the plaintiff in his said business have refused and still do refuse to deal with the plaintiff and the plaintiff has been thereby damaged in the sum of ..... dollars.

WHEREFORE, etc.

**1375. The same, for slander of an attorney.**

I. That at the times hereinafter named the plaintiff was and still is an attorney at law in good repute, duly admitted and practicing his said profession at .....

II. That on the .... day of ....., 19.., the defendant, intending to injure the said plaintiff in his said profession of an attorney at law, in the presence and hearing of divers persons, spoke of and concerning the plaintiff and concerning him in his profession as an attorney at law, the following false and defamatory words, that is to say [*here insert words used with proper innuendoes*].

III. That by means of the premises the plaintiff has been greatly injured in his reputation and credit, and in his business as an attorney at law, and has lost and been deprived of great profits which he would otherwise have received in his said profession, all to his damage in the sum of ..... dollars.

WHEREFORE, etc.

**1376. For words spoken ironically.**

I. That on the .... day of ....., 19.., said defendant, intending to injure the plaintiff, in the presence and hearing of divers persons, in an ironical manner falsely and maliciously did speak the following false and defamatory words of and concerning the plaintiff, that is to say: "He [meaning the plaintiff] is no thief," thereby meaning that said plaintiff had been and was a thief, and said persons in whose hearing said defamatory words were spoken then and there understood that such was the meaning of said words.

II. That by reason of the speaking of said slanderous words the plaintiff was discharged from the employment of ..... and was thereby deprived of the compensation which he would otherwise have received in such employment, to-wit, the sum of ..... dollars per month for the space of .... months. [*Allege other special damage, if any.*]

WHEREFORE, etc.

**1377. For slander of title.**

I. That the plaintiff, being the owner in fee [*or other estate*] of a certain farm, situate in the town of . . . . . and county of . . . . . [*briefly designate the property in question*] caused the same, on the . . . day of . . . . ., 19. . ., at . . . . ., to be offered for sale [*or to be put up and exposed for sale by public auction*].

II. That the defendant, well knowing the premises, and maliciously and without probable cause contriving to cause it to be suspected that the plaintiff did not own said farm, and could not sell the same, and to prevent him from effecting a sale thereof, procured one M. . . . N. . . . to attend said sale, and maliciously procured said M. . . . N. . . . to state, and did maliciously then and there publicly state, through the said M. . . . N. . . . in the presence and hearing of E. . . . F. . . . [*or, of many persons then and there assembled for the purpose of bidding on said property and buying the same*] concerning the plaintiff and his said property, the false and defamatory matter following, to-wit [*set out the words complained of, with suitable innuendoes*].

III. That by reason thereof the said O. . . . P. . . . was [*or, various persons, and in particular, naming the persons referred to, who attended on said auction sale for the purpose of buying thereat, were*] dissuaded from bidding therefor, and refused and still do refuse to purchase the said property in consequence thereof; and the plaintiff has been unable to sell the same [*and has been obliged to expend . . . . . dollars in and about the attendance upon said auction*] and has been otherwise greatly injured, to his damage . . . . . dollars.

WHEREFORE, etc.

**1378. For words imputing unchastity to a woman.**

I. That at the time of the uttering of the words herein-after set forth the plaintiff was and still is a married woman living and cohabiting with her husband C. . . . D. . . . at . . . . . [*or an unmarried woman residing with her parents, as the fact may be*], of chaste character and faithful to her marriage vows and obligations [*or and that her life has always been chaste and pure*].

II. That on divers days in the month of . . . . ., 19. . ., at the city of . . . . ., the defendant maliciously intending to

injure the plaintiff in her good name, fame and credit, and to bring her into public scandal and disgrace, and to cause it to be suspected by her neighbors and fellow citizens that she had been guilty of unfaithfulness to her said husband [*or, if the plaintiff is unmarried, that she had become an unchaste woman*], did falsely and maliciously speak and declare of and concerning the plaintiff, in the presence and hearing of divers persons, the false, scandalous and defamatory words following, that is to say [*set forth the words with proper innuendoes*].

III. That said statements so made were false and untrue and were made maliciously by the defendant with the intent of imputing unchastity to the plaintiff, and were so understood by the persons who heard them.

IV. That by reason of the speaking of said words the plaintiff has been greatly injured in her good name, fame and credit to her damage . . . . . dollars.

WHEREFORE, etc.

**1379. For ambiguous words with allegation of intent (Karger v. Rich, 81 Wis. 177; 51 N. W. Rep. 424).**

I. That at the times hereinafter stated, plaintiff was in the defendant's employ as [*state capacity*].

II. That on or about the . . . day of . . . . ., 19.., plaintiff had been intrusted with a quantity of postage stamps, to stamp certain letters written in the defendant's business; that there were nine letters for which no stamps had been provided; that the defendant, on being informed of the fact, approached the plaintiff in a threatening manner and willfully and maliciously, in the presence and hearing of the defendant's foreman and others, spoke to and of and concerning the plaintiff the following false and defamatory words: "You [meaning the plaintiff] have them [meaning the nine postage stamps], and if you [meaning the plaintiff] do not give them up [meaning the nine postage stamps] to me, I [meaning the defendant] will have you [meaning the plaintiff] locked up" [meaning that he would have the plaintiff arrested and imprisoned as a thief]; that the defendant then and there caught hold of the plaintiff and searched him against his will.

III. That the defendant thereby intended to charge, and did charge, plaintiff with having stolen the nine postage stamps belonging to the defendant, and that the words so spoken were so understood by those who heard them.

IV. That plaintiff did not have the said postage stamps, as the defendant well knew; that by reason of the premises plaintiff has been damaged in the sum of ..... dollars.

WHEREFORE, etc.

**1380. Allegations of special injury in slander.**

That by reason of the speaking of the false and slanderous words aforesaid \* one E.... F.... who had theretofore employed the plaintiff in the capacity of a foreman [*or as the fact is*] for ..... years and would otherwise have retained the plaintiff in his employ, afterwards and on the .... day of ....., 19.. discharged the plaintiff from his employ, to plaintiff's damage in the sum of ..... dollars.

[*Or substituting at the \* the following*]: One E.... F...., who was then about to employ the plaintiff as a clerk for certain wages, afterwards refused to employ the plaintiff, whereby he was out of employment for the space of ..... months, to his damage in the sum of ..... dollars.

[*Or*]: One E.... F.... who would otherwise have sold to the plaintiff certain goods [*naming them*] on credit, afterwards refused to do so, to the plaintiff's damage in the sum of ..... dollars.

WHEREFORE, etc.



## CHAPTER LVII

### COMPLAINTS FOR LIBEL.

- |   |   |
|---|---|
| 1381. General form, for words libelous per se.                                | 1385. For libel concerning business, by partners. |
| 1382. The same, against editor and publisher of newspaper.                    | 1386. For words not libelous on the face.         |
| 1383. For libel upon a professional man.                                      | 1387. The same, another form.                     |
| 1384. For libel concerning one's business, with allegation of special damage. | 1388. For words charging official dishonesty.     |
|   | 1389. For libel, by effigy.                       |

[See headnote to chapter LVI.]

#### 1381. General form, for words libelous per se.

I. That on the . . . day of . . . . ., 19. . ., the defendant maliciously [composed and] published of and concerning the plaintiff, in a newspaper called the Q. . . . Z. . . . [or, in a handbill which he caused to be circulated and posted] at . . . . . \* the false and defamatory matter following, to-wit [*copy of the article complained of; or say, a certain article containing the false and defamatory matter following, to-wit: give extracts from the article, including all the objectionable matter*].

II. That by means of said publication the plaintiff was injured in his reputation, to his damage . . . . . dollars.

WHEREFORE, etc.

#### 1382. The same, against editor and publisher of newspaper.

I. That at the time hereinafter mentioned the defendant was the editor, publisher, and proprietor [or either, as the case may be; or, the defendant C. . . . D. . . . was the editor, and the defendant E. . . . F. . . . was the publisher and proprietor] of the Q. . . . Z. . . . a newspaper published at . . . . .

II. That on the . . . day of . . . . ., 19. . ., the defendant maliciously composed and published concerning the plaintiff in said newspaper [or, if only the publisher is sued, maliciously published concerning the plaintiff in said newspaper; or, if

*both author and publisher are sued, the defendant C.... D.... maliciously composed for publication, and the defendant E.... F.... maliciously published in said newspaper*] [*continue as in last preceding form from the \**].

### 1383. For libel upon a professional man.

I. That at the time hereinafter mentioned the plaintiff was a physician, practicing as such, at ....., and was of good name and credit as such physician.

II. [*Allege publication, as in either of the two preceding forms.*]

III. That by means of said publication the plaintiff was injured in his reputation, and in his said good name and credit as a physician, and in his practice as such, to his damage ..... dollars.

WHEREFORE, etc.

### 1384. For libel concerning one's business, with allegation of special damage.<sup>1</sup>

I. That on the .... day of ....., 19.., the plaintiff was engaged in business as a merchant, in ..... and was of good name, fame and credit as such.

II. That on said day the defendeant, maliciously intending to injure the plaintiff in his said business, composed and published at ....., of and concerning the plaintiff, on a printed hand bill or circular [*or in a certain newspaper then and there published, called the Q.... Z....*] the following false and defamatory matter, to-wit [*insert article*].

III. That by means of said publication the plaintiff was greatly injured in his reputation and credit, and in his business has suffered great loss of custom, and has been deprived of great gains and profits, which otherwise he would have made, and has otherwise sustained loss and injury, to his damage ..... dollars.

WHEREFORE, etc.

### 1385. For libel concerning business, by partners.

I. That at the time hereinafter mentioned, the plaintiffs

<sup>1</sup> If special damages for loss of profits or business are sought to be recovered, the complaint must specially allege such loss and

damage with particularity and detail. Townshend on Slander and Libel, 4th ed. sec. 345.

were [and still are] partners, engaged in business as merchants in buying and selling dry goods at . . . . . under the firm name of A. . . . B. . . . & Co., and were of good fame and credit as such firm.

II. [*Allege publication of libel, as in preceding forms.*]

III. That by means of said publication the plaintiffs were injured in their reputation, and in the good name and credit of their firm, and in their said business as merchants, to their damage . . . . . dollars.

[*Allege special damage, if any, as in last preceding form.*]

WHEREFORE, etc.

### 1386. For words not libelous on the face.

I. That at the time hereinafter mentioned the house of the defendant had been burned down, and it was suspected that it had been feloniously set on fire.

II. That the defendant, knowing the premises, on the . . . day of . . . . ., 19. . ., maliciously composed and published, of and concerning the plaintiff the following false libel, to-wit: "He [meaning the plaintiff] kindled the fire [meaning the fire in the defendant's house] and I can prove it," thereby meaning that the plaintiff had feloniously set fire to said house; to the damage of the plaintiff . . . . . dollars.

WHEREFORE, etc.

### 1387. The same, another form.

I. That on or about the . . . day of . . . . ., 19. . ., the store building of the defendant was feloniously entered by some person unknown, and a large amount of goods and merchandise stolen therefrom.

II. That the defendant, knowing the premises, did on the . . . day of . . . . ., 19. . ., maliciously compose and publish of and concerning the plaintiff, in a certain letter written by him and delivered to, and read by E. . . . F. . . . and G. . . . H. . . ., and by divers other persons, the following false and defamatory matters, to-wit [*here insert the defamatory words*], meaning that the plaintiff had feloniously broken into the said store and stolen the said goods.

III. That by means of said false and defamatory publi-

cation the plaintiff has been injured in his name, fame and credit, to his damage . . . . . dollars.

WHEREFORE, etc.

**1388. For words charging official dishonesty.**

I. That plaintiff was at the times hereinafter mentioned, and still is, a citizen of the state of Wisconsin, of good fame, and reputation, and was from the . . . . day of . . . . ., 19. . . , up to the . . . . day of . . . . ., 19. . . , the duly elected and qualified city treasurer of the city of . . . . ., and was performing the duties of said office.

II. That the defendant, knowing the premises, and maliciously contriving to injure the plaintiff, and to deprive him of the confidence and repute of the people of said county, did on the . . . . day of . . . . ., 19. . . , maliciously [compose and] publish in a newspaper, printed and published in . . . . . in said county, of and concerning the plaintiff, the following false and defamatory matter to-wit: "The city treasurer [meaning the plaintiff] is short in his accounts [meaning that the plaintiff had been guilty of malfeasance in office and could not account for the moneys which had come into his hands as such treasurer]." [*Or insert other language used, with proper innuendoes.*]

III. That by means of said false and defamatory publication the plaintiff has been injured in his reputation and good name, to his damage . . . . . dollars.

WHEREFORE, etc.

**1389. For libel, by effigy.**

I. That on the . . . . day of . . . . ., 19. . . , at . . . . ., the defendant, contriving to injure the plaintiff in his reputation, and to bring him into public contempt and ridicule, did in the public street [*or, square or common*] of said . . . . . wrongfully and maliciously make, and cause to be made, an effigy or figure intended to represent the person of the plaintiff, upon which were inscribed the words "A. . . . B. . . . is a villain," and caused the said effigy to be hung up on a telegraph pole, in view of the neighbors of the plaintiff and of the public then and there assembled, by means of which the plaintiff has been greatly injured in his reputation, to his damage . . . . . dollars.

WHEREFORE, etc.

## CHAPTER LVIII.

### COMPLAINTS FOR OTHER VIOLATIONS OF PERSONAL RIGHTS.

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|---|---|
| 1390. For seduction of plaintiff's daughter or servant.     | 1396. For enticing away plaintiff's workmen.  |
| 1391. The same, where the daughter seduced was weak-minded. | 1397. For maliciously issuing execution on a paid judgment.   |
| 1392. For forcibly defiling the plaintiff.                  | 1398. For maliciously filing a <i>lis pendens</i> .   |
| 1393. For enticing away plaintiff's wife.                   | 1399. For conspiracy between wholesale and retail dealers by which plaintiff's business was ruined. |
| 1394. For criminal conversation with wife.                  | 1400. To recover damages for unfair competition.  |
| 1395. For alienating the affections of plaintiff's husband. | 1401. Complaint for blacklisting a discharged employe.  |

**1390. For seduction of plaintiff's daughter or servant (sustained in substance in *Parker v. Montcith*, 7 Oregon, 277).**

- I. That at the times hereinafter mentioned one M.... N.... was the servant [and the daughter] of the plaintiff.
- II. That on the .... day of ....., 19.., at ....., the defendant, well knowing the said M.... N.... to be the servant [and daughter] of the plaintiff, and wrongfully contriving and intending to injure the plaintiff, and to deprive him of her assistance and service, did, wickedly, willfully, and maliciously, and without the privity or consent of the plaintiff [forcibly and against the will of the said M.... N.... abduct her, *or*, entice and persuade the said M.... N.... to leave the residence and service of this plaintiff, and did] then and there debauch and criminally know her.
- III. That by reason of the premises, the said M.... N.... became pregnant and sick with child, and so remained for the space of .... months; that during that time she was unable to attend to the duties of her service, and the plaintiff was thereby deprived of her service and was obliged to



and did actually expend . . . . . dollars in nursing and taking care of her in her said pregnancy and sickness and was otherwise greatly injured, to his damage . . . . . dollars.

WHEREFORE, etc.

**1391. The same, where the daughter seduced was weak-minded.**

[*Follow complaint sustained in demurrer in Hahn vs. Cooper 84 Wis. 629, 54 N. W. 1022 as set forth in the opinion in that case.*]

**1392. For forcibly defiling the plaintiff (sustained in Koenig v. Nott, 8 Abb. Pr. 384).**

I. That on the . . . . day of . . . . ., 19. . ., at . . . . . [while the plaintiff was employed as a servant in the family of the defendant] the defendant, with force and arms, ill-treated the plaintiff, and made an indecent assault upon her, and then and there forcibly debauched and carnally knew her, whereby she became pregnant and sick with child and so remained and continued for the space of . . . . . months; at the expiration of which time, on the . . . . day of . . . . ., 19. . ., she was delivered of a child, of which she was pregnant as aforesaid.

II. That in consequence of said indecent assault made by the defendant on the plaintiff, she has suffered greatly in her health, and became sick and disordered, and so continued for the space of . . . . months, during all which time she suffered great pain, and was prevented from transacting her necessary business and affairs, and has been greatly disturbed in her peace of mind and has been otherwise greatly injured, to her damage . . . . . dollars.

WHEREFORE, etc.

**1393. For enticing away plaintiff's wife.**

I. That E. . . . F. . . . is, and at the times hereinafter mentioned was, the wife of the plaintiff.

II. That in the month of . . . . . 19. . ., while the plaintiff was living and cohabiting with and supporting her, in . . . . ., and while they were living together happily as man and wife,\* the defendant well knowing her to be the wife of the plaintiff, and wrongfully contriving and intending to injure the

plaintiff, and to deprive him of her comfort, society and aid [while this plaintiff was temporarily absent] maliciously enticed her away from the plaintiff's and her then residence in . . . . . to a separate residence, in . . . . ., and has ever since there detained and harbored her, against the consent of the plaintiff, and in opposition to his utmost peaceable efforts to obtain her from the defendant's custody, control, and influence.

III. That by reason of the premises, the plaintiff has been and still is wrongfully deprived by the defendant of the comfort, society, and aid of his wife, and has been put to great trouble and expense in endeavoring to recover her from the defendant, and has suffered great distress of body and mind, to his damage . . . . . dollars.

WHEREFORE, etc.

**1394. For criminal conversation with wife (See Scherff v. Szadecky, 1 Abbott's Pr. 366).**

I and II. [*As in preceding form to the \* continuing*]: the defendant wrongfully contriving and intending to injure the plaintiff and to deprive him of the comfort, society, aid, and assistance of his wife, on the . . . day of . . . . ., 19.., at . . . . . [forcibly and without the consent of the said E. . . . F. . . . and] wickedly, willfully, and maliciously debauched and carnally knew the said E. . . . F. . . . without the privity or consent of the plaintiff.

III. That thereby the affection which the said E. . . . F. . . . theretofore had for the plaintiff was alienated and destroyed, and the plaintiff was deprived of the comfort, society, aid, and assistance which he otherwise would have had from the said E. . . . F. . . . and has suffered great distress of body and mind, to his damage . . . . . dollars.

WHEREFORE, etc.

**1395. For alienating the affections of plaintiff's husband (adapted from Brennan v. Pasch, 7 Abbott's N. C. 249).<sup>1</sup>**

I. That the plaintiff is now, and for ten years last past has been, the wife of one E. . . . F. . . .

II. That in or about the month of . . . . ., 19.., and while this plaintiff was living, cohabiting with and being

supported by her said husband at . . . . ., and was so living with him happily as his wedded wife, and enjoying his affection, support, protection and respect, the defendant, well knowing the said E. . . . F. . . . to be the husband of the plaintiff, and wrongfully intending to injure this plaintiff and deprive her of her said husband's protection, society, aid and support, willfully, wickedly and maliciously gained the affections of said E. . . . F. . . . , and induced him to have carnal intercourse with her, and sought to persuade him and entice him by offers of money and otherwise to leave plaintiff without support and go with the defendant to the city of . . . . .

III. That thereafter and at various times between the time aforesaid and the . . . . day of . . . . ., 19. . . , the defendant continued her unlawful and wrongful intercourse with said E. . . . F. . . . and on or about said last-mentioned day induced and unlawfully and maliciously enticed said E. . . . F. . . . to desert plaintiff, and to leave her without means of support or protection, and to go with said defendant to the said city of . . . . . at which place the said defendant has ever since harbored and detained the said E. . . .

<sup>1</sup>Formerly this action could not be brought in Wisconsin. *Lonstorf v. Lonstorf*, 118 Wis. 159; 95 N. W. 961, following *Duffies v. Duffies*, 76 Wis. 374; 45 N. W. 522. Now, however, there are statutes in Wisconsin and North Dakota which permit a wife to sue for the alienation of her husband's affections: Wis. Stats. 1913 sec. 2315 (*White vs. White*, 140 Wis. 538; 122 N. W. 1051—action against husband's parents and third party); N. Dak. Rev. Codes 1905 sec. 4030, sub. 1 (*Greuneich v. Greuneich*, 23 N. D. 368; 137 N. W. 415—action against husband's parent).

The action may be brought in the following states, although there seem to be no express statutory provisions: California, *Work v. Campbell*, 164 Cal. 343; 128 Pac. 943—action against relative; Colorado, *Gilbreath v. Gilbreath*, 42

Colo. 5; 94 Pac. 23—action against husband's father; Iowa, *Miller v. Miller*, 154 Ia. 344; 134 N. W. 1058—action against husband's parents; Kansas, *Burch v. Goodson*, 85 Kans. 86; 116 Pac. 216—action against another woman; Minnesota, *Lockwood v. Lockwood*, 67 Minn. 476; 70 N. W. 784—action against husband's parents; Missouri, *Cornelius v. Cornelius*, 233 Mo. 1; 135 S. W. 65—suing husband's father; Nebraska, *Hodgkinson v. Hodgkinson*, 43 Neb. 269; 61 N. W. 577; *Rath v. Rath*, 2 Neb. (Unof.) 600; 89 N. W. 612—suing husband's father; Oklahoma, *Brison v. McKellop*, 41 Okla. 374; 138 Pac. 154—suing husband's parents; Oregon, *Keen v. Keen*, 49 Ore. 362; 90 Pac. 147—suing former husband's wife; Washington, *Phillips v. Thomas*, 70 Wash. 533; 127 Pac. 97—suing another woman.

F.... against the will of plaintiff, and willfully and maliciously debauched him.

IV. That by reason of the premises, the said E.... F.... has become estranged from plaintiff, and his affections and regard for plaintiff have been destroyed; and plaintiff has been, and still is, wrongfully deprived by the defendant of the comfort, society, support and protection of her said husband, and the happiness and benefits she otherwise would have received at his hands, and has suffered great distress of mind, body, and estate, to her damage, ..... dollars.

WHEREFORE, etc.

**1396. For enticing away plaintiff's workmen, (adapted from Walker v. Cronin, 107 Mass. 555).**

I. That at the times hereinafter mentioned the plaintiff was, and still is, engaged in the manufacture and sale of boots and shoes at ..... and that in the prosecution of said business it was and is necessary for plaintiff to employ a large number of persons as makers of such boots and shoes.

II. That prior to the acts of the defendants hereinafter set forth, the plaintiff did employ a large number of persons in his said business, and made large profits therefrom, and that the said defendants, well knowing the premises, did on or about the .... day of ....., 19.., with the unlawful purpose of hindering and preventing the plaintiff from carrying on his said business, willfully and maliciously persuade and induce a large number of persons who were employed by the plaintiffs as bottomers of boots and shoes, and others who were about to enter the employment of the plaintiffs and who were skilled in the art of bottoming boots and shoes, to leave and abandon the employment of the plaintiff without his consent and against his will; whereby this plaintiff lost the services of said persons and the advantages and profits which he would otherwise have made and received from the service of said persons.

III. That the plaintiff incurred large expenses in procuring other suitable workmen to take the places of those so induced to abandon their employment, and was necessarily compelled to pay much larger prices for the work of bottoming boots and shoes than he would otherwise have been compelled to pay, and greater prices than the usual market

prices for such work and labor, whereby the plaintiff suffered damage in the sum of ..... dollars.

*Or:* III. That by reason of the premises the plaintiff was deprived of the services of said workmen, and was wholly unable to procure other workmen to take their places, though he made due and reasonable effort so to do, and was compelled to abandon his said business for the period of .... weeks, and was thereby deprived of the profits thereof [*or set forth other damage suffered*] to his damage ..... dollars.

WHEREFORE, etc.

**1397. For maliciously issuing execution on a paid judgment.**

I. That on the .... day of ....., 19.., in the ....., court of ..... county, the defendant recovered judgment against the plaintiff for the sum of ..... dollars, which said judgment the plaintiff fully paid on the .... day of ....., 19..

II. That on the .... day of ....., 19.., the defendant, well knowing that said judgment had been paid willfully and maliciously and with intent to injure the plaintiff caused an execution to be issued out of said court thereon, and delivered to the sheriff of ..... county.

III. That the said sheriff, by virtue of the command of said execution, on the .... day of ....., 19.., seized and levied upon certain property of the plaintiff [*describing same*] of the value of ..... dollars, and thereafter sold the same, whereby said property has become wholly lost to the plaintiff.

IV. That plaintiff has been damaged by reason of the premises in the sum of ..... dollars.

WHEREFORE, etc.

**1398. For maliciously filing a lis pendens (adapted from *Smith v. Smith*, 20 Hun, 555).**

I. That the plaintiff, at the times hereinafter mentioned, was and still is the owner in fee of the following described real estate [*insert description*].

II. That on the .... day of ....., 19.., the defendant, by his attorney duly authorized, caused to be filed in the



office of the [*insert title of officer with whom lis pendens was filed*] a notice of the pendency of a certain action then pending in the . . . . . court of the county of . . . . . wherein the said defendant was plaintiff and this plaintiff [and others] were defendants, by which said notice it was alleged that said action had been brought to recover the interest of the plaintiff's husband E. . . . F. . . . in the said real estate.

III. That the said complaint, in said last described action, alleged and declared that the said premises hereinafter described were in fact the property of the said E. . . . F. . . . and that the same had theretofore been conveyed to the plaintiff by a certain conveyance which was without consideration, and was fraudulent and void as to said defendant, who claimed to be a creditor of said E. . . . F. . . .

IV. That the allegations of said notice, so filed as aforesaid, and of the said complaint, charging that said land was in fact owned by said E. . . . F. . . . and that this plaintiff's title thereto was fraudulent and void as against the creditors of said E. . . . F. . . . were and are wholly false and were known so to be by the said defendant at the time of the commencement of the said action, and of the filing of said notice, but that the defendant notwithstanding his said knowledge of the falsity of all of said statements and allegations, willfully and maliciously caused said action to be commenced and said notice to be filed, as aforesaid, with intent thereby to prevent the plaintiff from making a sale of said land, and to cause it to be suspected and believed that the plaintiff had not good title thereto.

V. That thereafter and on the . . . . day of . . . . ., 19 . . . , this plaintiff received a *bona fide* offer for the purchase of said land from one G. . . . H. . . . and could have sold the same to said G. . . . H. . . . for the sum of . . . . . dollars, but that in consequence of the filing of said notice, and the aforesaid allegations of said complaint the said G. . . . H. . . . refused to purchase the said land, whereby the plaintiff wholly lost the sale thereof to the said G. . . . H. . . . and has been prevented from effecting the sale thereof to any person, and has suffered damage in the sum of . . . . . dollars.

WHEREFORE, etc.

**1399. For conspiracy between wholesale and retail dealers, by which plaintiff's business was ruined (from Bratt v. Swift, 99 Wis. 579; 75 N. W. 411).**

I. That at the times hereinafter mentioned the defendants C.... D.... and E.... F.... were wholesale dealers in meat at the city of ..... and the defendants G.... H.... and J.... K.... were retail dealers in meat in said city, and that between the .... day of ....., 19.., and the .... day of ....., 19.., the plaintiff was engaged in business as a retailing butcher at ..... in said city and on or about said last named date he was forced by the said defendants, through their wrongful conspiracy hereinafter described, to quit said business, at which he had for a long time made a profit of ..... thousand dollars per year.

II. That at some time unknown to the plaintiff, but between the .... day of ....., 19.., and the .... day of ....., 19.., as plaintiff alleges, all the defendants engaged in the retail butcher business hereinafter mentioned, to-wit: G.... H.... and J.... K.... entered into an agreement, contract and conspiracy to and with themselves, and with the other defendants herein mentioned, in restraint of trade and commerce, particularly the retail butcher trade in the city of ..... and its suburbs, and they entered into a combination designed to restrain, and which did menace, hinder and control the plaintiff in his said business of a retail butcher and drive him out of his means of livelihood, lessen his profits, and ruin his said business, which combination is called ....., having a constitution and by-laws, showing a part, but not all of the purposes of said conspiracy and combination.

III. That some of the purposes of said combination so made were to monopolize the sale of butchers' meats in the city of ..... at the expense of the people of this state, to control that trade and manage the same solely in the interest of these defendants and others so united with them, and to oppress the people and coerce the plaintiff into joining such unlawful combination, monopoly and conspiracy against his will, and to drive him out of business in case he refused to join.

IV. And the defendants C.... D.... and E.... F.... were privies thereto though not members of the said .....,

and they so as aforesaid conspired, confederated, contracted and agreed to and with themselves, and with all other defendants, and others so as aforesaid united with them in said . . . . ., and with other wholesale butchers, cold storage and packing concerns in . . . . . and . . . . ., to enforce the monopoly and conspiracy hereinbefore alleged, in respect to the plaintiff and the public.

V. That in pursuance of said conspiracy the defendants, the retail butchers aforesaid, at divers times between the . . . . day of . . . . ., 19.., and the . . . . day of . . . . ., 19.., attempted to coerce and force, by intimidation and threats of ruining his business, the plaintiff to join said conspiracy and monopoly, the said . . . . ., and in pursuance of said conspiracy reported that he would not join, to all the defendants' wholesalers herein named and other wholesalers unknown to plaintiff, and charged him falsely with being guilty of unmercantile conduct, promoting excessive competition, house to house peddling, selling adulterated goods, and other things, as he is informed and believes. And in pursuance of said scheme the defendants, the wholesalers, C.... D.... and E.... F.... refused to sell plaintiff meats or goods of any kind in which they were dealing, except for prices far above those at which they sold and were selling to the other defendants, and other members of said . . . . ., and refused to sell goods to plaintiff except for sums far in excess of the market price for goods he wished to purchase. And the defendants, the said retail butchers, in like manner and in pursuance of the said scheme, refused to sell to plaintiff goods they had for sale and which he wanted to buy, except for prices far above the market prices, and in excess of prices charged by them to other people.

VI. That as a result of said conspiracy between defendants and others in agreement with them and their acts, plaintiff became unable to purchase meats and other goods needed in his business, because to all practical intents and purposes, all wholesale dealers in . . . . . and . . . . . are in the said conspiracy, and his business was ruined and he was forced to sell out, which he did on or about the . . . . day of . . . . ., 19..; and that it was one of the purposes of said conspiracy to make him join the said . . . . ., at an expense of . . . . . dollars, or more, a year, or in the alternative, to ruin his business.

VII. That the said boycott, that is, refusal to sell to plaintiff at the market price, such goods as defendants have for sale, is still maintained by all defendants against plaintiff, whereby he is prevented from engaging in the retail butcher business, and from earning a living thereby for himself and family, and the people of this state are damaged and their money extorted from them.

VIII. That by means of said conspiracy, and their acts in pursuance thereof, defendants compelled plaintiff to make a forced sale of his building situate at the places aforesaid, and of his stock of goods, and ice stored for use in his business, and to lose thereby the sum of . . . . . dollars, to which extent he was specially damaged by defendants.

IX. That by said conspiracy, and their acts in pursuance thereof, defendants inflicted general damages on plaintiff to the amount of . . . . . dollars or more.

WHEREFORE the plaintiff demands judgment against each and all defendants for the sum of . . . . . dollars, and the costs of this action.

**1400. To recover damages for unfair competition (sustained in Tuttle v. Buck, 107 Minn. 145; 119 N. W. 946).**

I. That for more than ten years last past plaintiff has been and still is a barber by trade, and engaged in business as such in the village of . . . . ., where he resides, owning and operating a shop for the purpose of his said trade.

II. That prior to the wrongful acts of defendant hereinafter mentioned plaintiff enjoyed an annual income of . . . . . dollars from said business.

III. That defendant, for the period of about twelve months last past, has wrongfully and maliciously endeavored to destroy plaintiff's said business, and compel plaintiff to abandon the same; that to that end he has persistently and systematically sought by false and malicious reports and accusations of and concerning the plaintiff, by personally soliciting and urging plaintiff's patrons no longer to employ plaintiff, by threats of his personal displeasure, and by various other unlawful means and devices, to induce, and has thereby induced, many of said patrons to withhold from plaintiff the employment by them formerly given.



IV. That defendant is possessed of large means, and is engaged in the business of a banker at said village of . . . . ., and at other places, and is in nowise interested in the occupation of a barber; yet, in pursuance of the wrongful and malicious purpose aforesaid, and for the sole purpose of injuring the trade of plaintiff, and of accomplishing his purpose and threats of ruining plaintiff's said business, and of driving him out of said village, defendant fitted up and furnished a barber shop in said village for conducting the trade of barbering.

V. That failing to induce any barber to occupy said shop on his own account, though offered at nominal rental, defendant, with the wrongful and malicious purpose aforesaid, has during the time herein stated, hired two barbers in succession for a stated salary paid by him to occupy said shop, and to serve so many of plaintiff's patrons as said defendant has been or may be able by the means aforesaid to direct from plaintiff's said shop.

VI. That at the present time a barber so employed and paid by defendant is occupying and nominally conducting the shop thus fitted and furnished by defendant, without paying any rent therefor and under an agreement with defendant whereby the income of said shop is required to be paid to defendant, and is so paid in partial return for his wages.

VII. That all of said acts were and are done by defendant with the sole design of injuring plaintiff, and of destroying his said business and not for the purpose of serving any legitimate interest of his own.

VIII. That by reason of the great wealth and prominence of defendant and the personal and financial influence consequent thereon, he has, by the means aforesaid, and other unlawful means and devices, materially injured the business of plaintiff, and has largely reduced the income and profits thereof, and intends and threatens to destroy the same altogether, to plaintiff's damage . . . . . dollars.

WHEREFORE, etc.

#### 1401. Complaint for blacklisting a discharged employee.

I. [*Allege occupation of the plaintiff, his proficiency, faithfulness, and amount of wages earned; his employment*



*by the defendant and the length of time of such employment.]*

II. [*Allege his discharge by the defendant with the reason assigned therefor if known to the plaintiff; if the discharge was the result of a difficulty, controversy, or misunderstanding with the defendant, state the same showing that plaintiff was not in the wrong.*]

III. [*Allege the making and adoption of black list rules by the defendant and all other employers in the same line of business in the United States prior to such discharge, setting forth a copy of the rules if possible, or if that can not be done then their substance.*]

IV. That immediately after the discharge of plaintiff as aforesaid the defendant, confederating and conspiring with the other employers named in paragraph III, with the purpose of defrauding and injuring the plaintiff and depriving him of the benefit of his knowledge and skill in his said business, and of the income derived therefrom, wrongfully and maliciously caused the plaintiff's name to be placed upon said black list, and wrongfully and unlawfully caused said blacklist rules to be enforced against this plaintiff, and thereby prevented and made it impossible for plaintiff to secure employment in his said occupation from the time of his said discharge to the present.

V. That by reason of the premises and the wrongful and unlawful acts of the defendant aforesaid plaintiff was and is prevented from securing employment in his chosen avocation, in which he had so as aforesaid become proficient and skillful and in the pursuit of which he was able to and did make and earn good wages, to wit, . . . . . dollars per month, and he alleges that the defendant company wrongfully, and maliciously enforced said "blacklist rules," against plaintiff, and demanded and procured the enforcement of said rules against him by the other employers named in paragraph III of this complaint.

VI. Plaintiff further alleges that being thus shut out from his occupation he was compelled to seek work elsewhere and in other occupations, but that he has been unable to earn more than . . . . . dollars a month in said occupation.

WHEREFORE, etc.



















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